Should politicians be forced to disclose their health status in Canada?

by

Catherine Lanthier

A thesis submitted to the Faculty of Graduate and Postdoctoral Affairs in partial fulfillment of the requirements for the degree of

Master of Journalism

School of Journalism and Communication

Carleton University

Ottawa, Ontario 2013

Library and Archives Canada

Published Heritage Branch

395 Wellington Street
Ottawa ON K1A 0N4
Canada

Bibliothèque et Archives Canada

Direction du Patrimoine de l'édition

395, rue Wellington
Ottawa ON K1A 0N4
Canada

Your file Votre référence
ISBN: 978-0-494-94613-8

Our file Notre référence
ISBN: 978-0-494-94613-8

Abstract

Should politicians be forced to disclose their health status in Canada? Twenty-one interviews with experts in journalism, medicine, law and politics were conducted for this thesis. Medical privacy is not absolute in Canada; medical information may be disclosed when public safety is at risk. The major concern regarding a politician's health is that he would be suffering from a serious illness that would affect his judgment.

This thesis found that politicians should not be forced to disclose their health conditions, but they should be ethically obligated to disclose the status of their health when a health problem corresponds to certain conditions, as when the illness is significant enough to affect the ability to govern and compromises mental faculties significantly enough to have impacts on decision-making.

This thesis suggests guidelines for journalists, politicians and physicians to follow in such a situation.

Acknowledgments

Determining if politicians should disclose their health conditions in Canada is a delicate question to tackle, and I sincerely thank Chris Waddell, my thesis supervisor, for believing in this thesis project with intelligence, optimism, support, and generosity.

Temporarily leaving a job to complete a master thesis in a language that I was not familiar with at the beginning was a challenge, and I sincerely thank everyone who has encouraged me throughout this project.

D'abord ma mère Danielle Charron, inspirante au quotidien par sa force contagieuse, et mon père, Gilles Lanthier, grand pédagogue et philosophe;

Mon prince au mot juste, Daniel Leblanc;

Maman Info-Com, Marie-Linda Lord;

Mes soeurs de coeur, Stéphanie Chouinard, Alexandra Duval, Karine Godin, et Lyne Robichaud;

Mes collègues de la Société Radio-Canada;

Carleton University;

And the Social Sciences and Humanities Research Council of Canada.

A vous tous, merci, thank you.

Catherine

Table of contents

Introduction

Canada's Minister of Finance James Flaherty made the front pages of major newspapers earlier this year because he is suffering from a rare skin disease called pemphigoid. Flaherty wanted to address the issue and gave an interview specifically about his illness to the *Globe and Mail* (Chase and Curry Jan. 31, 2013), as speculation was intensifying in Ottawa concerning the reasons for the visible changes in his physical appearance, as well his slurred speech in a recent interview. Flaherty provided a large amount of information. He disclosed the type of disease, when he developed it, when he was diagnosed, information on the effectiveness of his treatments and its impact, the amount of alcohol he consumes, and some of the information provided to Prime Minister Stephen Harper about his disease. Flaherty also said which kind of medication he is taking, prednisone, but did not specify the dosage. The Minister and his office claimed that the treatment had no effect on his job, a statement that was challenged in the pages of the *Ottawa Citizen* the following day, as he blamed his medication for speech problems he had during the interview. According to a 2012 study by Stanford University researchers found by the Ottawa newspaper, the medication can "cause anxiety and nervousness and, in rarer cases, serious psychological side effects including depression, confusion and even psychosis" (McGregor Jan. 31, 2013). Flaherty's goal in giving this interview to the *Globe and Mail* was to reassure the electorate that he was fit for the job, but *Globe* reporters Bill Curry and Steven Chase noted that he was "clearly uncomfortable divulging a private matter." It is not common custom for elected representatives

in Canada to disclose such information, and there is no procedure for them to follow when they chose to do so. No politician has to undergo health examinations regularly or disclose any test results information. The decision to divulge those results is personal. Canadians are generally informed of a politician's health when it becomes obvious, as it did for Flaherty who gained weight and whose face had bloated. This most recent example once again raised the debate about whether politicians should disclose their health status in Canada, when faced with the demands of the job of in the case someone like Flaherty, who oversees the federal government's financial fortunes.

Disclosing health records has become a common custom for high-profile politicians in the United States, but it is not the case in Canada. This tradition can partly be explained by the history of the U.S., as several presidents have died in office. It was afterwards revealed or highly suspected that some of them deliberately hid their significant health problems from the public, with the help of their physician, political aides or family. The practice of disclosing health records is now well established, which explains why President Barack Obama discloses his annually. However, even if there is significant pressure on politicians to disclose their health records in the United States, no law or rule forces them to do so. Although health was not an issue in the last presidential campaign - as both candidates appeared to be in good health - it is frequent that presidential candidates have to answer questions from journalists concerning their physical ability to lead the country.

The idea of this thesis originally came when the Leader of the Official Opposition, Jack Layton, died only three months after rising to the position in

2011. In response, many Canadian columnists and journalists called for greater disclosure of politicians' health records. Before the 2011 election campaign, it was well known that Layton had suffered from prostate cancer. During the campaign, the Leader of the New Democratic Party said he was fit for the job, as he was facing questions from reporters on this issue, partly since he underwent hip surgery in March, without fully explaining the reason for this fracture. However, his health condition dramatically deteriorated after the campaign. On July 25, he called reporters to a news conference, during which he announced that he was temporarily stepping aside after a second cancer diagnosis. Layton's physical appearance had significantly deteriorated: the 61-year-old had lost considerable weight, had a grey complexion, and his voice was much weaker than normal. The ill man who had the courage to present himself in front of the cameras that day however refused to disclose the nature of this new cancer. The *Globe and Mail* public health reporter Andre Picard was the first to decry the situation. He wrote an article in which he asked Jack Layton to disclose the nature of this second cancer, to be fair with "his political family," the electorate. Picard saw major ethical problems with the limited information provided by Layton and his staff:

> Ask yourselves this question: If it was the Prime Minister who was undergoing cancer treatment, would we be satisfied with the vagueness of the information? So why should we accept this lack of transparency from the Leader of the Official Opposition (and potential PM-in-waiting)? (July 27, 2011).

When you choose to live in the public eye, "one of the things you sacrifice is your privacy", he wrote, deploring the fact that the occupants of 24 Sussex and Stornoway enjoy a cloak of personal secrecy "that would not be tolerated south of the border." Many questions, such as those raised by Picard, remain unanswered:

"When prostate cancer spreads, it tends to move to the bones – the pelvis and hips in particular. Are Mr. Layton's stiffness and hip problems cancer-related?" If that is the case, Picard argued that when prostate cancer metastasizes, the survival rate is below 10 per cent, which is information the electorate should have known. Layton died a month later on August 22. To this day, the exact cause of his death remains a secret.

After his death, other voices like *La Presse's* columnist Patrick Lagacé, joined Picard: "Mr. Layton ran for the highest office knowing that the crab was gnawing at his bones. We should have been told. This would have changed the vote of thousands of people, that's clear" (Sept. 7, 2011). The *Globe and Mail* and *La Presse* columnist Lysiane Gagnon also called for full disclosure of health records: "Maybe, as Mr. Picard concluded, it's time for Canadian politicians to adopt the rules that prevail in the United States, where health records must be disclosed" (Sept. 12, 2011).

However, as noted earlier, there is no such rule in the United States. Months later, *Toronto* Star columnist Chantal Hébert also tackled the topic, but with a different approach. She argued that the media's lack of coverage of Layton's health was the major media failure of the 2011 political year. Layton became leader of the official opposition on May 2nd, but had shown many signs of health problems before and during the election that were not addressed appropriately by journalists, according to Hébert (Dec. 16, 2011).

Did the former leader of the NDP draw unclear boundaries? Layton and his wife Olivia Chow, who is also a Member of Parliament, were living in the public

eye. They appeared on talk shows, put their families forward in the media and even allowed reporters and cameras in their home. As will be demonstrated in this thesis, the questions raised about his health should be considered fair game.

Another principle that hangs in the balance is the right to know the truth, which voters expect from elected representatives. One of the reasons why columnists like Picard, Lagacé, Gagnon and Hébert argued for greater disclosure of health conditions is the suspicion that Layton might have been aware before or during the campaign that his cancer was very serious and threatened his life. Had he known that, should voters have known as well? Political science and communications professor at Bar-llan University in Israel, Sam Lehman-Wilzig, believes the main reason a journalist should not hesitate to publish personal health information occurs when a public official is aware of the medical problem while running for office:

> This is certainly equivalent to a candidate lying about the problem and the journalist should not think twice about reporting the facts. There is not any "statute of limitations" on political mendacity, and winning an election under false pretenses should not grant immunity to the political perpetrator (65).

A year after Layton's death, the *Canadian Press* raised the question again about the cause of his death (Branswell Aug. 21, 2012). In an interview conducted by Ottawa reporter Joan Bryden, Layton's widow, Olivia Chow, said she was even more convinced today that withholding the information was the best thing to do. It might have had a negative impact on people suffering from the same cancer, she said. Chow added that the only people who ask her about the cause of her husband's death are reporters. In that news article, *La Presse's* columnist Patrick

Lagacé said his readers were "absolutely incensed" by an article he wrote a year ago in which he said that Quebeckers had the right to know which type of cancer Layton had: "To most of those who did react, it was an entirely private issue," he said.

Norman Spector, former chief of staff to former Prime Minister Brian Mulroney, thinks the cause of Layton's death is now a matter for historians: "The lesson we should draw from this whole experience is that political leaders in Canada as in the United States should have regular health exams and should release that information to the public. That's my view," he told CP. The anniversary of Layton's death coincided with revelations concerning Liberal Senator Joyce Fairbairn, who was still at work voting a dozen times four months after she was considered legally incompetent due to Alzheimer's disease. That case led *Toronto Star* Ottawa Bureau Chief Bruce Campion-Smith to explore the public-private grey zone, who noted that the negative public reaction on articles related to politicians' health issues was revealing, while "most seem content to remain in the dark" (Sept. 1, 2012). Stephen Ward, director of the Center for Journalism Ethics in the School of Journalism and Mass Communication at the University of Wisconsin-Madison, told *the Star* politicians get an easy ride in Canada:

> "Canadian politicians are given too much privacy and not enough scrutiny... I think Canadians generally... are much too reticent about demanding information, all kinds of deep information, about what their politicians are doing... Once you walk into public life and, in addition to that, hold large amounts of political power, you must expect almost total scrutiny... In the United States there is no doubt there is a greater demand for knowledge and for politicians to tell all (...)" (Campion-Smith Sept. 1, 2012).

To Ward, the prime minister of Canada should even disclose his daily schedule, and any omissions should be treated as an "absolute exception," he told Campion-Smith.

Jack Layton was not prime minister of Canada, but he was running for the job. In Canada, only two prime ministers have died in office: Sir John A. Macdonald in June 1891 and Sir John Sparrow David Thompson in 1894. Adam M. Dodek, associate professor in law at the University of Ottawa, conducted a comparative study of succession processes between Great Britain, Canada, Australia, the United States and Israel. He found that in parliamentary systems, these processes are generally uncertain due to several factors that all apply to Canada: "The cloudy role of the head of state, the lack of an explicit contingency plan, and the fact that the issue has not arisen in recent history" (77). Dodek concludes that the U.S. model of automatic succession is preferable to others, and is now the norm in Europe and in other democracies:

> Democratic legitimacy is not an overriding concern in U.S. presidential succession. As the designated successor of the President, the Vice President is elected with the President on the same ticket. Thus, the potential presidential successor seemingly has the electorate's stamp of approval (76).

In Canada, when the prime minister dies, the Governor General confirms the nomination of the interim prime minister, who must be the new interim-leader approved by the party in power in the House of Commons. Thereafter, the party has to choose a new leader, which means a leadership race usually takes place, a process that is likely to take months. In the meantime:

> Canadian constitutional practice includes the appointment of an

> Acting Prime Minister... The Privy Council Office, which oversees the government machinery and ensures government continuity, has a contingency plan that automatically replaces the Prime Minister with the Acting Prime Minister when the Prime Minister can no longer serve in office (Dodek 72).

The Canadian parliamentary system would allow elected ministers and senators to fill in as prime minister if required, but the succession process in case a prime minister becomes incapacitated is problematic, as explained by Bédard, O'Neal and Roberston in a study published for the Parliamentary Information and Research Service.

> There are few procedural implications if the Prime Minister dies in office. If it happens while the House of Commons is sitting, the House may adjourn for an extended period...The incapacity of a Prime Minister would be more problematic; no precedents exist for this situation. When a new ministry is being formed following the death, resignation, or dismissal of a Prime Minister, it is appropriate for the House to adjourn from day to day and transact only routine business on the days when it meets (7).

Since Confederation, no prime minister has been removed, but "this is not to say that it could not happen. It would presumably be required if a prime minister became incapacitated and could not tender a resignation" (Bédard, O'Neal and Robertson 6). However, "the circumstances that might give rise to dismissal have nevertheless been the subject of considerable academic debate" (Bosc and O'Brien 56).

The need to have this academic debate now is apparent, as illnesses of elected leaders often make the headlines and are subject to recurrent debates in the media about what we need to know in Canada concerning our elected officials' health. This thesis will demonstrate that there is no mechanism in place in the House of Commons to ensure elected officials, including the prime

minister, high-profile ministers and opposition party leaders, are fit for the job. This means that a severely ill prime minister could technically stay in office. The scope of this thesis will be limited to determining in which circumstances a politician should be transparent about his health, and will provide the opportunity for journalists to reflect on their practice involving privacy and the public interest.

One of the main reasons frequently evoked for avoiding this debate is that Canadians are much more respectful of privacy than Americans. Canadians journalists have had this reputation for decades. In 1987, Peter Desbarats, at the time dean of the Graduate School of Journalism at the University of Western Ontario, addressed the topic in an article published in the *Globe and Mail*:

> The point need be elaborated no further: regardless of what has been happening in the United States, Canadian journalists have rarely in the past pried into the private affairs of politicians, and have shown no recent deviation from this pattern (Dec. 11, 1987).

Such journalistic practices are mostly seen as being an Anglo-Saxon phenomenon, as Columbia University professor Anthony Lewis observes: "Only in the United States and Britain does the press go mad over straying politicians. Is it something about the Anglo-Saxons, as the French call us?" (66).

Yet, it appears those journalistic practices may be more widespread than that. In the article "Trends in news media and political journalism," British Sociology professor Jeremy Tunstall suggests Anglo-American journalistic practices are a growing phenomenon in Europe. International news agencies, the main Anglophone newspapers distributed across Europe, and twenty-four-hour all-news channels operated by Anglo-Americans lead towards an Anglo-American

dominance in European news (237). This trend is also observed in Canada. Nick Russell, author of *Morals and the media*, one of the rare English language Canadian books dedicated to ethics in journalism, underlines this trend and the unfortunate consequence that such journalistic practices may produce in reducing the number of people interested in entering politics. "In such process the community may lose some capable potential leaders – people who simply refuse to submit themselves to such rigorous examination" (123).

While Quebec and French journalists have the reputation for exercising self-restraint concerning the reporting of politician's private lives, Armande Saint-Jean, communications professor at the University of Sherbrooke, notes that Quebec journalistic practices are becoming increasingly similar to American ones. In her book concerning the ethics of information in Quebec, she argues that Quebec journalists have a false feeling of moral superiority over their respect for private life - even if they are frequently infringing it - pretending to avoid the excesses of American journalists (236). In France, the redrawing of the boundaries of political news has taken other forms, according to French sociologist and political expert Erik Neveu. Journalists now tend to be more interested in the psychology of the political mind, while politicians are invited to comment on current events weekly and are subject to biographical investigations (33).

Canadian journalists may have the reputation of being more respectful of privacy than their American counterparts, but the United States justice system is also more permissive about the kind of reporting concerning private lives. Through his research, Lehman-Wilzig interprets the attitude of the U.S. justice

system toward privacy of public officials in this fashion:

> Regarding the issue of privacy, ... publication of a true statement would probably gain virtually total judicial immunity as long as the victim is a public figure. The more "public" the individual, the narrower the scope of what can be deemed private, as long as the report itself is not false (61).

By comparison as Michael Crawford's *Journalist's Legal Guide* outlines, the Canadian justice system's view on privacy for public officials is almost the opposite:

> A journalist can comment on the public acts of people, but the private life or moral character of a public figure is regarded in the same manner as a private individual. In fact, the courts have awarded higher damages to defamed public officials because they are more 'sensitive to attack than the ordinary man' (92).

At first glance, it seems that Canadian journalists would face more serious consequences by reporting personal details concerning a politician's private life without his or her consent. Publication of such information in Canada could be considered as a "defamatory matter," if proven that the information published would "affect adversely the reputation of that person in the estimation of ordinary persons... (or) deter ordinary persons from associating or dealing with that person, or injure that person in his occupation, trade, office or financial credit" (29). Even if journalists used well-known defences to support publication, such as the defence of "responsible communication" established in 2009 by the Supreme Court of Canada, it would be a challenge for lawyers to prove the defamatory statement was actually true, since they do not have access to the defamed politician's health records, as they figure among the most protected and private information. However, as it will be explained in Chapter 3, it does not prevent a reporter from publishing such information and to win his case, if

knowledgeable sources are prepared to testify for him, and if he can show he accurately reported the information in the public interest.

Some argue disclosure of health records is not as necessary in Canada as in the United States, because of the differences between a parliamentary system and a presidential system. Elections Canada's website describes Canada's electoral system as "a single-member plurality," which means "in every electoral district, the candidate with the most votes wins a seat in the House of Commons and represents that electoral district as its member of Parliament." The name the electorate chooses in the ballot box is their local candidate, generally affiliated with a political party. Therefore, the electorate does not – technically - vote for the party leader. However, the last general election in Canada suggested that local candidates are irrelevant to some as in Quebec the NDP went from one to 59 seats. This impressive gain was not explained by the policies of the party or the popularity of local candidates (as many did not even campaign) but by the personality of Layton. The current federal government is also taking a personalized approach, and has rebranded the "Government of Canada" as the "Harper government" in official communications, according to information obtained by the *Canadian Press* (Cheadle Mar.3, 2011). These are two examples of how political parties in Canada use their leaders to promote the party, which is called the personalization of politics. It seems appropriate to conclude many people vote for the party leader instead of voting for their local candidate. Those voters expect to be governed by the leader they chose, not by an interim leader.

Some argue disclosure of health records would ruin the confidentiality

relationship between a doctor and his or her patient. That argument suggests that under such circumstances a politician might be tempted to hide information from his doctor, fearing it would be published. However, politicians already cannot keep their medical history completely confidential. For example, in several states and provinces, a doctor must warn the authorities when a patient had suffered a seizure, to ensure public safety. In most cases, the person's driver license will be removed until the illness is under control. The same logic applies in Quebec when a patient confides to his doctor that he consumes alcohol heavily. Without need for the patient's consent, the physician has the right to pass that information to the Société de l'assurance automobile du Quebec (SAAQ), which may remove the patient's driver's license for a period of time. This thesis will explore several circumstances in which medical privacy is lifted.

Methodology

Although politicians in Canada do not have any obligation to make their health condition public, the purpose of this thesis is to examine whether they should have an ethical obligation to do so in certain circumstances, and whether journalists have the duty to report such information.

Therefore, this thesis will attempt to answer those questions: When should the health of a politician become a public issue? Which health conditions would be worth disclosing or reporting on, and whom should this practice apply to? Where does the public-private grey zone end? Should prime ministers disclose their visits to the doctor? Do Canadian politicians owe any, partial or full disclosure of their health records to the electorate? If so, how should they

proceed and what should they disclose?

The many interviews conducted for this thesis, with Canadian journalists, academics and politicians suggest this issue needs to be addressed, although in different ways. A total of twenty-one experts were interviewed:

- Karl Bélanger, principal secretary for Canada's New Democratic Party, former Jack Layton's senior press secretary
- Carolyn Bennett, M.D., Liberal Member of Parliament for St. Paul's
- Marc-François Bernier, assistant professor, University of Ottawa, Research Chair in communication of the Canadian Francophonie, specializing in journalism ethics (CREJ)
- Yves Bolduc, M.D., Liberal MLA for Jean-Talon, former Quebec minister of Health and social services (2008-2012)
- Karen Breeck, retired flight surgeon with the Canadian Forces, former president of the Federation of Medical Women of Canada (FMWC)
- Susan Delacourt, *Toronto Star* political reporter on Parliament Hill
- Norman Delisle, retired *Canadian Press* political correspondent in Quebec city
- Jeffrey Dvorkin, executive director at the Organization of News Ombudsman, director of journalism program, University of Toronto
- Chantal Hébert, *Toronto Star* and *L'Actualité* columnist
- Stan Kutcher, Dalhousie University psychiatry professor
- Guillaume Lavoie, member and researcher in residence at the Center for the U.S. Studies of the Raoul-Dandurand Chair in Diplomatic and Strategic Studies
- Kellie Leitch, M.D., Conservative MP for Simcoe-Grey
- Christine Moore, nurse, NDP MP for Abitibi-Témicasmingue
- André Picard, The *Globe and Mail* public health reporter
- David Salisbury, M.D., director of medicine, Civil Aviation, Transport Canada
- Scott Reid, communications and speechwriting professional, former senior advisor and director of communications to Prime Minister Paul Martin
- Margaret Somerville, founding director of McGill's Centre for

Medicine, Ethics and Law

- Klaus Pohle, Carleton University journalism professor, specialized in media law
- Sylvia Stead, The *Globe and Mail* public editor
- Pierre Tourangeau, *Radio-Canada's* ombudsman
- Jean-Bernard Trudeau, M.D., Collège des médecins du Québec Assistant Secretary, former president of the Quebec Medical Association and former member of the executive committee of the Canadian Medical Association

The interviews were all conducted by the author in person or over the telephone. The interviews averaged 30 minutes. To make a proper selection of the quotations to use in this thesis, each interview was transcribed. General trends emerged from those interviews and guided the content of this thesis.

Those interviews represent the core of this thesis and are an original contribution to the subject, since a review of the literature has found practically no academic publication examining the history of Canadian leaders suffering from illnesses and its potential impacts, which is surprising comparing to the voluminous amount of literature available in the United States.

In an article published in the Canadian Medical Journal in 1993, author and historian Charlotte Gray tackled the topic. While she acknowledges the "Canadian media food chain is not as voracious as the American version" (296), she observed the same tendency from reporters to speculate on the health of politicians, and suggested Canadian medical institutions should come up with their own policies on that matter. In addition, the media landscape has changed since then, with the growth of several all-news channels and social media hungry for fresh news content. Unfortunately, the Canadian Medical Association declined my interview requests because it did not want to make any statement on

this delicate issue. Therefore it is impossible to find out if this topic was ever raised to suggest new policies to institutions in that matter.

This thesis will first draw a historical review of high-profile politicians from Canada and several countries who have suffered from serious health conditions. Several examples of ill political leaders are American, which is the reason why that country takes an important place in this chapter. Chapter two explains how the practice of disclosing health records functions in the United States, and what are the ongoing issues surrounding it. The chapter also will examine the potential impact disclosure and non-disclosure may have for a nation. As the U.S. is the only country to have such a practice, it will be an important point of comparison. American journalists, politicians and academics have had recurrent debates on this issue and the opportunity to take the discussion to a deeper level than Canadians. This chapter also includes several reflections on privacy, its erosion, the difficult balance between the right to privacy and the right to know, the media's interest for politicians' personal stories and the personalization of politics. The next chapters include several interviews with Canadian experts from a wide variety of fields: journalism, politics, political science, medicine, and law. Chapter three will start by highlighting the interviewees' reflections on the coverage of the last federal campaign. It then tackles in greater detail the request for full disclosure from André Picard and the criticisms made about the journalists' work by Chantal Hébert. The next subsections will suggest guidelines for journalists to follow who have to report on politicians' health issues and models that would encourage more transparency from politicians. A table of the general results of the interviews figures in this

chapter. Chapter four will demonstrate that medical privacy is not absolute in Canada; medical information may be disclosed when public safety is at risk. This part of this thesis will mainly be constituted of interviews with physicians who determine which health conditions could prevent a politician from doing his job, and the ones he should disclose if he decides to stay in office.

To facilitate the reading of this thesis, the masculine will be used. It should also be noted that the author of this thesis translated the French language publications and interviews cited.

Chapter one

Politicians' health issues:

A worldwide concern

There is an extensive list of Canadian and world leaders who have suffered from serious illnesses while in office. The majority of those and their inner circles hid that information from the public or only partially disclosed it, disguising the truth to their advantage. In fact, there are so many examples of leaders who were severely ill while in office that this thesis will concentrate only on a few, to demonstrate that disclosing the health of political leaders is a subject with international dimensions. Through newspaper articles, academic sources and interviews, I will first demonstrate in this chapter that the health of politicians has also been a concern in Canada. I will afterwards highlight other examples in which world leaders, particularly American ones, have been suffering from an illness to demonstrate what kind of consequences such a situation may possibly have on a country.

Canada

Only two Canadian prime ministers died in office, and both deaths occurred more than a hundred years ago. It is well known that Sir John A. Macdonald, Canada's first prime minister, had a serious problem with alcohol. He died in office in June 1891. Sir John Abbott then became prime minister, but resigned in 1892 because of illness. Sir John Thompson took over; however he died suddenly of a heart attack only two years after becoming prime minister. If

such a succession of unfortunate events were to happen today, it would certainly lead to a national conversation concerning physical and mental health conditions of elected representatives. However, the political and media landscape at the time was completely different. To some, the approach of Canadian politicians concerning disclosure of health conditions did not evolve the way it should have naturally been. The *Globe and Mail* public health reporter André Picard thinks secrecy is still the norm in Canada concerning health records:

> In 1991, then leader of the Official Opposition, Jean Chrétien, had surgery to remove a nodule from his lung (it turned out to be benign) and even his communication director was kept in the dark...
>
> In 2006, prime minister-designate Stephen Harper was treated in the emergency room of the Civic Hospital. Mr. Harper, who suffers from asthma, was prescribed antibiotics for a chest infection and sent home. The visit only became public because an *Ottawa Citizen* reporter was tipped off, and the PMO was irked (July 27, 2011).

Picard also deplores the lack of information provided by the Bloc Quebecois when its leader Lucien Bouchard almost died in 1994. It took days for the media to obtain a confirmation that he was suffering from flesh-eating disease. In the meantime, reporters were relying on internal sources to report on his medical condition. His doctors finally answered questions during a press conference on Saturday December 2nd, while the infection had been detected four days before (Hamilton Dec.3, 1994).

One of the most relevant Canadian examples of ill leaders apart from Jack Layton is Robert Bourassa, Quebec premier from 1970 to 1976 and 1985 to 1994. He suffered from skin cancer while in office. Bourassa mysteriously disappeared for 16 days during the Oka Mohawk crisis in early September 1990, revealing

later in the month that he had undergone a skin excision. He first said that the skin problem was "not insignificant" (*Toronto Star* Sept.28, 1990) without mentioning that it was in fact a malignant melanoma tumor, the deadliest form of skin cancer. That information was later confirmed by his staff (Séguin Sept. 28, 1990). The Quebec media criticized the deception around Bourassa's illness during the Oka crisis and questions arose concerning his ability to govern, leading Robert McKenzie from the *Toronto Star* to argue on his behalf:

> To begin floating questions about his ability to do his job is both malicious and outlandish, especially when both Bourassa and his staff say he's now in perfect health and requires no further treatment. This kind of speculation is also a disservice to all those who have suffered from debilitating illnesses and who continue with their careers (May 4, 1993).

Journalists exasperated Bourassa's staff, seeking to learn more on his illness. Sylvie Godin, Bourassa's press secretary, implored curious reporters in the halls of the National Assembly on November 20: "What more do you want? A picture of him in is nightgown showing you his scar?" (*Toronto Star* Nov. 21, 1990). Bourassa's aides admitted later in February that they had covered up Bourassa's health condition:

> Godin told reporters Bourassa's first operation was in July at a private Montreal clinic and not - as stated earlier - at a top-rated U.S. clinic in September. In last summer's Mohawk crisis, Bourassa - now fit - had to appear in full control, Godin said (*Toronto Star* Feb. 19, 1991).

Bourassa was supposedly cancer-free after his treatments in 1990, but a check-up in December 1992 followed by another examination revealed another tumor had spread to the right side of his chest. The tumor was removed, and again raised concerns about his ability to lead the province (Séguin Jan. 9, 1993).

On January 13 1993, Bourassa discussed his health with reporters, admitting he could die within weeks, but he refused to step down:

> "This is the most difficult thing because, you know, we all want to live as long as possible. And you don't know what will happen in one month, two months or three months... It could be extremely difficult or rapid. It could be very slow. It could be cured or it could not cured," he said (Maser Jan. 14, 1993).

Overall, hundreds of newspaper articles were written concerning Bourassa's health, which has also been the subject of many analyses. Some Canadian doctors even publicly expressed their concern regarding Bourassa's treatments. For example some criticized the experimental skin cancer therapy he chose to receive in the United Sates (*Ottawa Citizen* Jan. 13, 1993). Reporters and editorialists wanted greater openness:

> Given the volatile nature and national impact of Quebec politics, Bourassa should be candid about his condition. Jean Chretien's forthrightness -- constantly quoting his doctor as saying the federal Liberal chief could scale Mount Everest -- helped dispel rumors that would have left him politically infirm. U.S. presidential hopefuls routinely release medical records to reassure voters. In his position of public trust, Bourassa must follow suit (*Ottawa Citizen* Jan. 12, 1993).

Globe and Mail columnist Lysiane Gagnon seemed surprised to see how much "intense scrutiny" Bourassa faced:

> A few eminent editorialists even accused the medical experts and physicians who had commented on his case (on a theoretical basis, of course) of being insensitive and unethical. This uneasiness is especially palpable in the French media, where the tradition of respecting politicians' private life is still very strong (Jan. 16, 1993).

After being away for treatments, Bourassa returned triumphant to the National Assembly in May 1993 revealing that he had once again won his battle

with cancer: "The chief of surgery at the institute, Dr. Steven Rosenberg, issued a brief communique saying Bourassa had responded well to experimental treatment and was now 'in excellent health'" (McKenzie Oct. 2, 1990). Bourassa finally chose to step down as a Quebec Liberal leader in early September, "citing family reasons as foremost in his decision" (Dougherty Sept. 15, 1993). Bourassa however died from skin cancer in 1996.

Another former Quebec premier also made the headlines because of his health and personal life. René Lévesque was particularly known for his heavy drinking and smoking. Pierre Tourangeau, a former eminent journalist in Quebec became Senior Director, Content News and Current Affairs Information (French services) of the Canadian Broadcasting Corporation, before being appointed the CBC's ombudsman for French services. The ombudsman says Lévesque had an active life style, he was highly seductive with female journalists and political staff, which should have been known as it was having an impact on his professional conduct.

> He had a private life that was pretty rock and roll. All the reporters were aware of his sexual escapades, and everybody was keeping it secret. It presented problems. A posteriori, I think certain things could have been made public, and they were eventually as biographers talked about it (personal interview, Tourangeau).

His behavior led his colleagues to request his examination and hospitalization, as some of them noticed he seemed unwell, depressed and had violent episodes. Norman Delisle was a *Canadian Press* correspondent at the National Assembly for more than thirty years, and said one of his television colleagues even disguised himself as a nurse with a hidden camera to try to get visuals of Mr. Lévesque when he was hospitalized. "He walked in the hospital's

hallways to try to see Mr. Lévesque, but he did not succeed as his room was guarded by police officers of the Sureté du Québec" (personal interview). The prime minister had severe depression and symptoms of a manic episode, according to the last volume of René Lévesque's biography written by Pierre Godin, who conducted several rigorous interviews (qtd. in Richer Oct. 29, 2005). Lévesque was pressured by his own party to step down, which he did in June 1985.

The media doesn't have the same level of interest or expectations about the health of ministers as opposed to a prime minister or premier. Claude Béchard, who was the minister in several ministries in Quebec from 2003 to 2010, died in office in September 2010. It was well known that Béchard was suffering from pancreatic cancer since 2008. He even temporarily stepped away from his job during his treatments, but decided to return before they ended. Although his decision was a surprise, Béchard faced no pressure from the media and his political adversaries to quit his job. He even received a standing ovation in the National Assembly the first day he came back to work. Instead of being criticized for staying in office while still sick, there was a provincial outcry when he passed away as the image that remains of Béchard is the one of a "real political beast" (Lessard Sept. 7, 2010).

It is now quite common that politicians suffering from cancer or a significant physical illness disclose it to the electorate, especially when they are at the treatment phase and have to take a leave. Ottawa Mayor Jim Watson is among the politicians who are taking a new approach concerning their health

conditions, as he announced on his Twitter account in August 2012 that he was going for surgery, because a skin cancer had returned.

Aug. 7

Jim Watson @JimWatsonOttawa
Thanks for all kind comments and good wishes. Surgery took a little longer, but it was successful & again appreciate our health care system!

6 Août

Jim Watson @JimWatsonOttawa
I'll be off work tomorrow for minor surgery @ QCH as a result of a return of Squamous Cell skin cancer. Hope to be back to work Wed #ottcity

Toronto Mayor Rob Ford's approach to his health was similar to elected representatives south of the border for a short period of time, as his press office regularly published health bulletins when he spent two days in hospital for a battery of tests in the summer of 2012. His health was also the topic of many newspaper articles in 2010 when he participated in the "Cut the Waist" challenge in an unsuccessful effort to lose weight. Ford says he wants transparency, but critics say he is only looking for empathy and attention that leads to positive media coverage, as he does not disclose his actual health records (McQuigge Aug. 11, 2012).

Many of the politicians with cancer participate in fund raising campaigns to raise awareness about their disease. Former cabinet minister and Liberal MP Belinda Stronach had breast cancer in 2007, and features concerning her

treatments, going from her breast being removed to her breast reconstruction surgery, were detailed in the media. Although Stronach wanted to raise awareness concerning the importance of early detection, she also asked for some privacy, claiming health is a personal matter. Susan Delacourt, a parliamentary reporter, said in an interview for this thesis that women in politics are expected to disclose more personal information than men occupying the same job, she has observed during her career.

Some still choose to keep the information more private, as when former Newfoundland and Labrador premier Danny Williams made headlines for his decision to go for heart surgery in the United States in 2010. He was criticized for not having his operation in Canada and for providing incomplete information on the reasons that motivated him to go there.

Politicians' battles with depression remain much more in the dark, as there is still a lot of stigma surrounding mental illnesses. Interim Liberal Leader Bob Rae is among the few leaders who publicly spoke about his struggle with depression when he was studying in Oxford in the 1970s. Alcoholism is another illness that comes with stigma. Living a stressful lifestyle is among the risks that contribute to the development of alcoholism, which is one of the reasons why many politicians have suffered from alcohol problems. New Democrat MP Romeo Saganash temporarily stepped down in October 2012 after an incident involving alcohol on Air Canada. He admitted to a dependence on alcohol and took a leave until January 2013 to treat his medical problem. "Life on Parliament Hill can be hectic and exciting, but it is also full of obstacles and pitfalls. Many of my colleagues can attest to this," he told reporters (Campion-Smith Oct. 22, 2012).

To this day, no journalist has investigated Saganash's addiction. We do not know how long exactly he has had this problem, or if it prevented him from fulfilling some of his duties.

These are just a few examples of Canadian politicians who have had a wide variety of health problems, in the same way that many Canadians might be confronted by one of them at least once in their lives. The question is whether politicians should admit to having suffered or be suffering from such conditions when running for office.

World leaders

There are also many examples of world leaders who had diseases, and who hid them from the public. One of the most recent and striking examples was France's longest-serving president, Francois Mitterrand. In the 1970s France was shocked by the death of Georges Pompidou, while he was president of the French Republic. Pompidou had been diagnosed with "multiple myeloma, a slowly progressive cancer of the bone marrow" (Post and Robins, *When Illness* 9) in 1972, but concealed the illness from the public. Before being elected, Mitterrand was "highly impressed by the pitiful ending of Georges Pompidou that had traumatized the country, and had decided to bank on transparency" (Gonod and Gubler 24). Among the promises Mitterrand made to the electorate before his first term in 1981 was to publish his health records twice a year.

In a controversial book published right after Mitterrand's death in 1996, his doctor Claude Gubler revealed to French political reporter Michel Gonod how Mitterrand concealed his illness from the beginning of his presidency. Gubler

says the President was diagnosed with metastasized prostate cancer the same year he was elected, but that was not mentioned in the health records released to the public as he and his staff decided that he should have his tests under a false identity. Mitterrand released his health records on 28 occasions during his presidency. When the President had difficulties walking or when he was in pain, he made up excuses, such as an injury caused by playing tennis (Gonod and Gubler 39). "A quasi-clandestine organization supervised the health of the President for ten years... Vigilance, confidence and secret were our three requirements" (121), Gubler says, explaining how every piece of evidence concerning Mitterrand's treatments disappeared. When Dr. Gubler travelled with him, he would see Mitterand early in the morning while everyone was still asleep. He hid all the medical material he used in a suitcase that he brought back to Paris to burn (45). At the end of his presidency, Mitterrand was so ill that he "even received a head of state lying in his bed" (179).

François Hollande, elected President of the French Republic in May 2012, has also engaged to publish his medical check-ups every six months. However, the information provided to the media is limited and general, as it only states that his health condition is "normal." Preceding French President, Nicolas Sarkozy, also informed the public of his health status several times during his presidency.

Winston Churchill, two-time prime minister of Great Britain, suffered from illness that affected his performance, especially during his second term from 1951 to 1955. In 1951, "at the age of seventy-six, Churchill was a virtual walking text-book pathology.... He had significant illnesses affecting his heart, brain, lungs, gastrointestinal tract, skin and eye" (Post and Robins, *When Illness*

20). Foreign Secretary Anthony Eden compensated for Churchill's lapses, but fell seriously ill in the spring of 1953:

> At about the time that Eden was about to undergo the third operation, Churchill suffered a second major stroke... The inner circle believed that Eden should succeed Churchill, but even putting aside the question whether Churchill would step down, this would be impossible given Eden's own uncertain health (Post and Robins, *When Illness* 21).

According to doctor Bert Edward Park, who wrote the well-documented book *The Impact of Illness on World Leaders*, Churchill suffered from several cerebrovascular events after 1949, and "more tragic still, all of these cerebrovascular events, except the last, were carefully hidden from the British public" (302-303). Research by Jerrold M. Post and Robert S. Robins in *When Illness Strikes the Leader* show that Churchill's near total disability was disguised, and that some of his staff was "principally concerned with the effect of his fluctuant incapacity on the country's well-being"(23).

Physical illnesses are only one aspect of diseases faced by political leaders, as many researchers are even more preoccupied with the potential impact of a mental illness or someone operating under heavy medication. The leader of the Chinese Revolution Mao Zedong was apparently suffering from senile megalomania, while Premier of Soviet Union Joseph Stalin's terminal paranoia was associated with arteriosclerosis (Post and Robins, *The Captive King* 204, 208), which "stands as an example of a degeneration of reality-testing capacity with catastrophic consequences for his country" (208). Adolph Hitler suffered from Parkinson's disease, coupled with other illnesses like chronic cholecystitis (Park 150-151), and was taking a strong combination of medication of which the

effects on his mental state were difficult to evaluate, but "suffice it to say, in the jargon of the street, that Hitler was simultaneously taking coke and speed" (Post and Robins, *When illness* 71).

The United States

Some of the examples cited above happened a long time ago, and did not lead these countries to ask their leaders to disclose their health records. American politicians remain the most straightforward with their health conditions, since it has become a tradition for presidents and candidates running for the Oval Office to disclose such information. The president makes public his or her health records, while other American public figures also often allow their doctors to answer journalists' questions regarding their last medical visit. Such disclosure is seen as essential information for the electorate to make sure their presidents are healthy enough to govern. However, there is no constitutional obligation, law or rule that forces any U.S. elected representative to reveal a single detail about his or her health. "There is no law that requires any type of revelation of candidate health, nor is there legal penalty for candidate deception" (Post and Robins, *Choosing a Healthy President* 843). The American journalistic culture and appetite for such details appear to be mostly responsible for this tradition.

There are also historical roots. "Fourteen of the eighteen American presidents in the twentieth century had significant illnesses while in office" (Abrams, *Can the Twenty-Fifth Amendment* 115) while eight died while they were still president. "The most detailed and best documented description of how a complex institution deals with the problem of executive disability is found in

the history of the U.S. presidency" (Post and Robins, *When Illness* 171). In those days disclosing health conditions was not a common custom.

In 1893, President Grover Cleveland faced surgery for carcinoma of the jaw, however "the surgery did not take place in an hospital, but on a specially outfitted yacht... The cruise was a pleasure trip, Cleveland's officials said" (Bloom 85).

Woodrow Wilson, president from 1913 to 1921, hid that he had suffered at least three minor strokes before being elected. He then had another, this one major, in September 1919. Once again, the information remained secret: "News of his condition was smothered by his intimates... He grew a beard and moustache to cover the muscle atrophy on the left side of his face...Wilson had been a sickly man throughout his life" (Bloom 85). Wilson's deception was strongly criticized, as being "in dangerous disregard for the nation's welfare" (Park 63), and analyzed as resulting "in the effective disenfranchisement of the entire American people who had no idea their vote for Wilson would give the power to make presidential decisions to his wife" (Streiffer, Rubel and Fagan 420).

"(Warren G.) Harding (president 1921-1923) suffered a heart attack while traveling from Vancouver to San Francisco but his White House physician publicly attributed his illness to crabmeat poisoning" (Gilbert, *The Contemporary Presidency* 878).

Franklin D. Roosevelt's poliomyelitis was well known; however its impact was hidden. He was the first Presidential candidate who released a health report, responding to a challenge from a magazine, but produced by his own staff. The report written by Ross McIntire, Roosevelt's personal physician during the

Second World War, was misleading at some points according to Post and Robins, as when it stated that Roosevelt would keep on recovering power in his legs and that he could walk all necessary distances.

> The doctors must have known that Roosevelt could not walk by any common definition of the term and his legs would never recover.... McIntire deceived not only Roosevelt and his family but the public as well concerning the severity and prognosis of Roosevelt's health problems (*Choosing a Healthy President* 848).

The press was also inconsistent in its reporting: "The press colluded with the Roosevelt administration in hiding his dependence on crutches and wheelchairs, and of much greater consequence, in not revealing the extend of his deteriorating health in 1944" (*Choosing a Healthy President* 850). Roosevelt died in office a year later. That led some scholars such as Post and Robins to suggest that "Had the public been as well-informed as to Roosevelt's health in 1944 as those close to him were, popular pressure would likely have forced him to step aside in favor of another candidate"(*Choosing a Healthy President* 846). Roosevelt died of a stroke, however a dark spot over his eyebrow engendered speculation that his death was caused by a melanoma that metastasized to his brain. Dr. Lawrence K. Altman considers those assertions "unproved" and "far from convincing," as "The speculation . . . cannot be verified because there was no autopsy and no known biopsy, and most of Roosevelt's medical records disappeared shortly after his death from a safe in the United States Naval Hospital in Bethesda, Md." (*The New York Times* Jan. 4, 2010).

Things started to change slightly with Dwight D. Eisenhower, president from 1953 to 1961. While he had hidden two heart attacks and hypertension problems before his election in 1952 (*Choosing a Healthy President* 845), his

press secretary James Hagerty was very explicit in his description of President Eisenhower's myocardial infarction (heart attack) in 1955. "If there was a recorded birth date of presidential medical disclosure, it occurred on September 24, 1955... Hagerty cited chapter and verse, down to the color of the president's pajamas and how many bowel movements Eisenhower had each day" (Bloom 85). James Reston, the Washington correspondent for *The New York Times*, won a 1957 Pulitzer Prize for national reporting on Eisenhower's health, an analysis detailing the effect of Eisenhower's illness on government (Bloom 86). In the eyes of Stephen G. Bloom, professor of journalism at the University of Iowa, Eisenhower opened the door to the regular disclosure of health records. "Eisenhower's openness, Hagerty's groundbreaking disclosures and Reston's reporting shattered the secrecy that had shrouded the health of U.S. presidents" (86). However, Hagerty and his physicians were later criticized for suggesting that Eisenhower was recovering more quickly than he was (Bloom 85). "Eisenhower's failure to disclose his medical conditions illustrates a situation in which the voters were denied the ability to make an informed voting decision even though the medical condition did not have the expected outcome" (Streiffer, Rubel and Fagan 421). While in office, Eisenhower also suffered from an intestinal obstruction in 1956 and a stroke in 1957.

> Eisenhower was disabled for many months during these three bouts of illness. He became concerned that he might end up as the impaired and incompetent president that Woodrow Wilson had become in his last year and a half in office. He urged Congress to seek a remedy, especially for the difficult problem of a president who was unable to declare his own inability... No mechanism existed for a disabled president to relinquish the powers of office and then reclaim them when his condition improved (Abrams, *Shielding the President* 534).

John F. Kennedy was the youngest president ever elected to the White House but at age 43, he "was among the most politically impaired of all U.S. presidents" (Bloom 88). Still, the deception about his health was lost in his assassination. Post and Robins state "Kennedy misled the public about his adrenal insufficiency during the campaign. He and his campaign staff believed that the issue would have hurt him" (*Choosing a Healthy President* 846). He also suffered from Addison's disease, a degenerative illness, which he chose not to disclose (Bloom 88). As Kennedy was assassinated before completing his first term, scholars could not assess the long-term impact of his health problems: "We cannot evaluate the effect that the disease and the side effects of the powerful adrenal steroid treatment he was receiving would have had on his leadership and decision-making" (Post and Robins, *Choosing a Healthy President* 846).

On October 20, 1965, President Lyndon B. Johnson (1963-1969) surprised American reporters with an uncommon move. Johnson lifted his shirt to show off his scar, as he was recovering from gall bladder surgery and the removal of a quarter-inch kidney stone. "As far as most journalists could remember, this was the first time such an intimate photographic record was kept of a presidential medical procedure; it was also the first time a president candidly talked about such a personal health matter" (Bloom 84-85). Bloom concludes that, by showing his scars, "whether by design or default, the president implicitly telegraphed to millions around the world the message that presidential health was both public and political" (87). However, he notes that two years later, Johnson underwent a separate secret operation to remove a common form of skin cancer, scared of the impact the word 'cancer' would have on the public (83).

Missouri Senator Thomas Eagleton learned the hard way that hiding health records can destroy a campaign. Chosen as vice-president by Democratic presidential nominee George McGovern in 1972, he first did not disclose to the party that he had been hospitalized three times for psychiatric reasons in the past 12 years and had received electro-convulsive shock treatments. However, his condition was known in political circles in Missouri and Eagleton was challenged to disclose his condition. He ended up revealing his past condition in a press conference two weeks after his appointment. "The announcement led to Eagleton's removal from the ticket and the loss of any hope the Democrats had of defeating Nixon. It also damaged the image of the national Democratic Party" (Post and Robins, *Choosing a Healthy President* 852).

Ronald Reagan was the oldest president ever elected to the White House, and while his health has been the subject of much speculation, it cannot be proven that he was actually suffering from Alzheimer's during his presidency that ended in 1989. Reagan disclosed his Alzheimer in 1994. Reagan projected the image of a strong and healthy president who had survived an assassination attempt. "Although the degree of Reagan's impairment is disputed, the important point here is the discrepancy between reality and the image conveyed to the public" (Post and Robins, *When Illness* 13). According to former physician and *New York Times* reporter Lawrence K. Altman, Ronald Reagan was the first American president to allow a reporter to interview his doctors. In July 1985, Reagan's physician announced at a press conference that the President had cancer:

> The President subsequently underwent successful treatment for colon cancer, basal cell skin cancer, and prostate enlargement, and each time reporters ambushed the health and medical issues for days (Bloom 92).

This practice marked the beginning of an era in which it not only became common for American journalists to request this kind of information from politicians, but also the beginning of an era in which politicians would start answering these questions in detail. Still, in 1992, during his quest for the Democratic presidential nomination, Senator Paul Tsongas stated he was cured from a cancer diagnosed in 1983, endorsed by his doctors. However, that was false:

> They had concealed the fact that the transplant had not resulted in a cure, for the cancer had recurred in 1987, requiring the removal of a cancerous node...Tsongas suffered a serious recurrence in December of 1992, requiring an extensive course of chemotherapy in January 1993 (Post and Robins, *Choosing a Healthy President* 854-855).

Tsongas disclosed those details only after suspending his campaign. The analysis of Streiffer, Rubel and Fagan clearly highlights that "complete confidentiality could undermine voters' rights to make informed voting decisions. If Tsongas had been elected, it was unlikely that he would have lived through his term" (420).

During the 2008 Presidential campaign, John McCain's health came under media scrutiny, mostly because McCain was 72 years old and had suffered from cancer. After McCain selected young and relatively inexperienced Alaska Governor Sarah Palin as his running mate, questions about his health intensified. Hundreds of physicians signed a petition asking McCain to release his health records. As *The New York Times'* physician reporter Lawrence K. Altman pointed out, there were many holes in the disclosure of nominees' health during this

campaign:

> *The Times* has requested such interviews with Mr. Obama since last spring and with Mr. McCain and his doctors since March 2007. None were granted. More recently, *The Times* sent letters to all four nominees requesting interviews about their health with them and their doctors. None agreed (Oct. 19, 2008).

McCain had released nearly 1,200 pages of medical information in May 2008, "but the documents were released in a restricted way that leaves questions, even confusion, about his cancer," wrote Altman.

As these examples have shown, even if politicians in the United States disclose their health records, there are no regulations regarding disclosure and that often leaves journalists skeptical. The next chapter will explore in greater detail the arguments provided by those who are against and in favor of disclosure of health records in the United States.

Chapter two

Disclosure of politicians' health records in the U.S.: Two visions

Some of those examples of ill politicians in the history of the United States led to passage of the 25th Amendment. The introduction and chapter one noted that no law or provision exists in the U.S. Constitution concerning disclosure of health records. However, many scholars still believe such a law is needed, as they suggest the 25th Amendment is badly constructed and enables medical cover-ups in the White House. Furthermore, some advocate for a system that would force partial or full disclosure for presidential candidates and presidents, which would either be regulated by the law, or by a medical committee that would review the president's health records on a regular basis and disclose any findings of public interest. This chapter will solely concentrate on the debate in the United States. Many of the arguments invoked by both sides apply to Canada, even if the political systems are different. This chapter will argue that the question is far from being resolved south of the border, and that there are serious concerns with this practice. However, to some, the dangerous consequences an ill leader may have on a country override the politicians' right to privacy.

Framework for disclosure

Congress passed the 25th amendment in 1965, and states then ratified it, becoming law in 1967. No equivalent exists in the Canadian constitution or legislation.

"The legislators, political leaders, and scholars who shaped it in the fifties and sixties were responding not only to Eisenhower's illnesses but also to Kennedy's assassination and to their knowledge of the crippled presidencies of Garfield and Wilson" (Abrams, *Shielding the President* 534).

The 25th Amendment is divided in four sections:

AMENDMENT XXV
Passed by Congress July 6, 1965. Ratified February 10, 1967.

Section 1.In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section 2.Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3.Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section 4.Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the

> latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office (*US Constitution*, 25th Amendment).

The 25th Amendment had an important impact. "In the Twenty-fifth Amendment, the United States is considered by many international legal scholars to have one of the most advanced and best codified procedures for constitutional succession" (Post and Robins, *When Illness* 171). The amendment has two goals:

> Its central purpose was to preserve cognitive competence in the White House at all times by ensuring that a sick or injured president, incapable of decision making in a crisis, will be temporarily relieved of the burdens of office. A second goal was to forestall concealment of presidential disability by making the transfer of power to the vice president temporary, thereby assuring the president that he could reclaim office once he was able to do so (Abrams, *Can the Twenty-Fifth Amendment* 115).

Nevertheless, it left many questions unanswered. "The development and use of the amendment, however, demonstrates that no written procedure can ensure certain and legitimate succession" (Post and Robins, *When Illness* 171). Herbert L. Abrams raises three central problems with it.

> (1)The issue is deeply embedded in a political culture where those who surround the president and are closest to his aberrant behavior or disabling illness are dependent for their positions and prestige on keeping him in office. (2) A political judgment of disability by the vice president and the Cabinet must be based on a sound medical determination of impairment of such a degree that impedes the president's ability to discharge some or all of the duties of office. (3) A mechanism providing this type of unbiased, accurate information on the president's health never has been formally addressed (*Can the Twenty-Fifth Amendment* 116).

For Post and Robins, "the problem of succession demonstrates that, even in the most advanced democracy, when illness strikes the leader, the system is jeopardized" (*When Illness* 172). The fourth provision has not yet been invoked.

> The fourth provision of the amendment is, by far, the most controversial. It provides for the involuntary separation of a president from the powers and duties of office, elevating the vice president to the acting presidency (Gilbert, *The Contemporary Presidency* 879-880).

The assassination attempt on President Ronald Reagan in 1981 would have been a good occasion to invoke Section 4 of the 25th Amendment, as he had to go under anesthesia. However, it was decided not to, even if it was known to his staff that the anesthetic drugs would have some effect on the mind and brain for a couple of days (Abrams, *Shielding the President* 539). As Herbert L. Abrams, professor of radiology at Stanford University and author of numerous articles on presidential disability notes, invocation was rejected because of ignorance, caution, concern, and guile (546). One of the main reasons cited by Reagan's inner circle was the belief that it would have alarmed the American people and allies (540), while his circle wanted to convey a serene view to the world and sense of security to the country (539-540). For Abrams, in case presidential incapacity occurs, "a clear chain of command must exist. This should be the top priority of any administration" (545).

Abrams concedes, vice-presidents and cabinet members may have many reasons for not wanting to invoke the 25th Amendment, mostly motivated by fear: fear of political reprisals by the president, fear of appearing power hungry, fear of losing power. Here the media is "hardly blameless."

> Its complicity in concealing presidential infirmity is well-known... Even today, reporters make judgments on what they feel the public should know about the health of candidates. Surely, their duty is to report, not to censor; the electorate is the best judge of what it wishes to know about the health of its presidents and candidates (Abrams, *Campaign of 1992* 809).

To Abrams, a physician who agrees to be the president's doctor must be aware that a sick president can harm the health of the country. Therefore the issue should be reviewed with the president, and "if the president fails to accept the need for such limits on confidentiality, the physician should refuse the appointment and indicate his reasons for doing so" (811). He argues the disability provisions of the 25th Amendment "have not been implemented as the framers intended." He believes in a need for a medical advisory committee.

> A powerful antidote to the White House cover-ups of the past would be a medical advisory committee on the health of the president, created by congressional action... The independence, breadth of expertise, lack of conflict of interest, availability, and credibility of the committee would assure the public of an objective appraisal and would preclude inaction in the face of disability (*Can the Twenty-Fifth Amendment* 129).

Such a committee would consist of two internists, two neurologists, a psychiatrist and a surgeon, and would meet only once a year or whenever the president seems significantly impaired. In both cases, relevant findings concerning the health of the president would be disclosed to the vice-president and the public. Abrams believes the public interest overweighs the president's right to confidentiality and that such a committee is mandatory for the president's inner circle - including his physician – who might try to deceive the public by publishing incomplete medical information, as it happened in the past.

> The determination of the president's ability to discharge his duties

> must be based not only on an objective medical evaluation but also on the certainty that this information will be transmitted to the vice president... The physician (of the president) also might be less than adequately trained to perform comprehensive examinations in all areas of the president's mental and physical health.... An independent body of experts will be objective, will have no conflict of interest, will not feel personally bound to the president, and can be depended on not the violate the public trust (Abrams, *Can the Twenty-Fifth Amendment* 121-122).

Bloom believes disclosure of health records would also contribute to health education, and also asks for the creation of an independent team of physicians for presidents and presidential candidates.

> Why not go further and require medical disclosure from presidents and presidential candidates? Like federally mandated financial disclosure, medical disclosure should take the form of a standardized document, rigorous in detail, completed by a team of physicians after a thorough medical examination. The physicians should not be the official's private doctors, but an independent, nonpartisan team of physicians (95).

Former president Jimmy Carter and other voices also thought the amendment needed improvements. In 1994, the Working Group on Presidential Disability was created; it made nine recommendations in 1996. However, the idea of a physicians' committee that would evaluate the president's health records was rejected. Four of their recommendations are relevant for this research and most could be introduced, in Canada as well:

> (3) A formal contingency plan for the implementation of the amendment should be in place before the inauguration of every president.
> (6) The president should appoint a physician, civil or military, to be senior physician to the White House and to assume responsibility for his or her medical care... and be the source of medical disclosure when considering imminent or existing impairment according to the provisions of the Twenty-fifth Amendment.

> (7) In evaluating the medical condition of the president, the senior physician in the White House should make use of the best consultants in relevant fields.
> (8) Balancing the right of the public to be informed regarding presidential illness with the president's right to confidentiality presents dilemmas. While the senior physician to the president is the best source of information about the medical condition of the president, it is the responsibility of the president or designees to make accurate disclosures to the public (Working Group, 11-19).

It is important to identify the concerns that flow from the non-disclosure of an elected representative's illness. Lehman-Wilzig identifies five consequences that would apply if an U.S. president hid a grave illness:

> (a) Reduced capacity to lead and rule or to meet national crises head on; (b) impaired decision making during crucial treaty negotiations; (c) financial panic and political instability due to different political positions held by the next-in-line; (d) despite the 25th Amendment, lack of clarity in deciding when an incapacitated leader is once again fit ... (e) a succession crisis when the leader passes away without adequately providing for proper succession (60).

In the article "Medical Privacy and the Public's Right to Vote: What Presidential Candidates Should Disclose," Robert Streiffer, Alan P. Rubel and Julie R. Fagan introduce a concept they hold dear, which is the right to vote. They argue that candidates have a moral duty to disclose health records, which is based on:

> The same deep democratic principle that supports the public's right to vote, namely, that those who govern do so only with the consent of the governed. Concerns about the medical privacy of candidates must be subordinated to that democratic principle (418).

Streiffer, Rubel and Fagan respond to most arguments against disclosure of health records. To them, the 25th Amendment does not represent a fair alternative to voters, as "citizens expect that they will be governed by the one and

not the other" (429) – which means by the president and not the vice-president. In those circumstances, the electorate must be aware of the president's condition, so it can consider the choice of the vice-president more carefully. The authors argue that "voting decisions should be based not just on the candidate's past record of service and views about issues and programs, but also on the candidate's ability to implement those views and programs were he or she to be elected" (430). Publishing medical information comes with the risk this information will be misunderstood or distorted, but they say "just about any information about a candidate can be distorted or interpreted irrationally" (433), and "even if the public responds to information irrationally, it is still something to which members of the public have a right, and if they have a right to it, then the mere fact that they will not use it rationally does not justify withholding it" (434). They also contend that responsible journalists can explain the information provided with context and research, and that medical prognoses are reliable for many illnesses. They say candidates' right to privacy conflicts with a fundamental democratic right, the right of citizens to vote.

Sreiffer, Rubel and Fagan give examples of employees required to partially disclose their medical conditions when their employers' interests override the employees' own desire for privacy. For example airline pilots "are required to pass stringent medical and psychological examinations administered by FAA-approved physicians, every six months" (431). Stephen G. Bloom argues all members of the military must be screened for HIV, yet the commander-in-chief of the army, who is also the president, does not have to be tested. This is one of

the reasons he argues for modification to legislation that would force disclosure of health records, as history has proved that "the health of presidential candidates and presidents must be public information" (96).

> Voters today know how much is in a candidate's bank account, but they know hardly anything about a candidate's physical and mental health...The person who runs for – and holds - the highest elected position in the nation and one of the most powerful positions in the world is not required to make public anything about his or her health (95).

Sreiffer, Rubel and Fagan claim "that candidates are morally required to waive their right to medical privacy concerning a very specific set of medical conditions" (418). However, as they explain, not all medical conditions should be disclosed (i.e. being a victim of rape would not have to be disclosed, even if it could influence a politician on certain policies). Limiting disclosure only to serious health conditions would avoid publishing trivial information that could harm the political process. Examples of conditions requiring disclosure would be:

> Known medical conditions that would give the candidate a life expectancy of five years or less; medical conditions that would significantly impair the candidate's judgment or behavior while in office; history of past illness likely to recur or cause complications later in life; and mental illness likely to result in significant cognitive impairment while in office (424).

The authors would not have obliged Vice-President Dick Cheney to disclose his heart condition, since he was vice-president and there were no high risks of death within five years. It would also not be relevant to disclose that a president is suffering from mild multiple sclerosis, since it is "unlikely to affect five year longevity, cognition, or competence" (425). By contrast, examples of health conditions that would significantly impair the candidate's judgment might

include uncontrolled epilepsy or significant ventricular arrhythmias. The authors concede "each case is unique, and depends on such factors as the stage of the disease, the time elapsed since treatment, and the kind of treatment used" (425). Streiffer, Rubel and Fagan also tackle the delicate topic of mental illness. Again, disclosure would depend on the available evidence, but history of depression might well be necessary to disclose, as in some cases its effects "-which may include trouble concentrating, impaired memory, and insomnia - can be severe enough to undermine one's ability to adequately perform the core responsibilities of a position like the presidency" (426). The authors do not believe sexual preferences, past drug use and extramarital affairs such as the Lewinsky-Clinton scandal should be disclosed to the electorate, which they call "inappropriately relevant information" (427).

Status quo

As explained earlier, Section 4 of the Amendment is highly controversial. The provision has never been invoked, as these staffers owe their jobs to the president. Such a move could also backfire against the vice-president, who could be seen as opportunistic. However, Robert E. Gilbert, political science professor at Northeastern University, prefers seeing it as strength of the amendment:

> These political facts of life reflect a strength of the amendment rather than a weakness. It should be extraordinarily difficult for the president of the United States to be separated from the powers and duties of office and such action should be contemplated only under the most serious of circumstances... Additionally, it is precisely because the vice president and Cabinet are so close to the president that their decision to invoke section 4 by those not so close to the

> president might well be perceived as a coup d'état (*The Contemporary Presidency* 883-884).

Another concern raised about the Amendment is the degree to which it relies on confidence in the President's physician. That is why some suggest there should instead be a medical standing commission that would have the authority to evaluate the President's health records, to ensure he is fit for office. However, this is also highly controversial, since it opens the door to disclosure of health records that would not be previously approved either by the president or his staff. Robert E. Gilbert is strongly opposed to introducing a commission:

> A standing medical commission would damage the aura of the presidency – and the president's 'professional reputation' – badly and perhaps frequently, even if the damage done were inadvertent. In the process of periodically assessing the president's health, the commission would itself undermine his ability to lead, by raising questions about his capacity to exercise power fully and/or to remain in power at all (*The Contemporary Presidency* 885).

Gilbert raises an interesting argument concerning politics that seems to be forgotten by other scholars who tackled the topic: "Strength, or the illusion of strength, is essential to leadership while weakness, or the appearance of weakness, undermines it" (*The Contemporary Presidency* 886). Gilbert believes medical decision-makers are not necessarily compatible with politics, and that political judgments must take precedence over medical ones for the president of the United States.

> Particularly at times of crisis, presidents who are seriously impaired will almost certainly be allowed by political decisions makers to remain in office because a change in leadership would destabilize the government and demoralize the country. Medical decision makers, on the other hand, might well not be nearly so sensitive to such considerations because their strong focus would be the medical condition of the president rather than the political condition of the country (*The Contemporary Presidency* 887).

Gilbert offers examples of the impact such a commission might have had if it were in place in the times of previous presidents. As noted earlier in this thesis, John F. Kennedy suffered from several undisclosed health problems. To Gilbert, Kennedy was still one of the best presidents the United States ever had. Gilbert believes the disclosure of Kennedy's numerous medical problems "would almost certainly have precluded him from being nominated and elected to the presidency"(*The Contemporary Presidency* 886). In a separate article, Gilbert argues that subordinating politics to medicine could be harmful for the country. His Eisenhower case study is particularly relevant. As Gilbert explains, two out of three physicians consulted by Eisenhower following his heart attack in 1955 gave him negative prognoses; one argued he should not run again.

> If, however, these three differing physicians had sat on a formal presidential disability commission in 1956 and had gone public, either directly or through leaks, with their various opinions, the country would have been confused and presumably frightened... Perhaps Eisenhower would have been convinced by the media uproar to step aside in the "national interest." Perhaps he would have run again and been rejected by voters unwilling to re-elect a "dying" man (*Coping with Presidential Disability* 11).

To Gilbert, the course of history would have been changed for the worse, since the prognoses were mainly wrong, as Eisenhower lived until the age of 78. He adds such a commission would "negate the right enjoyed by most Americans of choosing their own physician," and "it would violate the privacy rights that all Americans hold dear and represent unacceptable interference into the health care accorded to the President of the United States" (*Coping with Presidential Disability* 7), while a panel would not be able to observe a president regularly. "White House physicians regularly observe the president at various times

throughout the day; members of a presidential disability commission simply would not" (*Coping with Presidential Disability* 10).

The erosion of privacy?

Many researchers worry about growing interest by the media in politicians' personal stories. Forcing disclosure of politicians' health conditions would certainly have the impact of depriving them from a certain degree of privacy. The right to privacy is one of the most important arguments against it, and it is the reason why even in the United States, such a law forcing disclosure has very slight chances of ever being adopted. In the article "Privacy, Morality and the Law," W.A. Parent identifies a person's sexual preferences, drinking or drug habits, income, the state of his or her marriage and health belonging to the class of personal information that should remain private (92-93).

However, as several researchers have observed, privacy is constantly changing and being redefined. University of Virginia law professor Frederick Schauer defines privacy as follows:

> Once we understand that privacy... is largely a function of a socially constructed and contingent way of organizing the world, we can understand as well that this social construction is as variable as the forces that create it. As we now live in a world in which changes in law, changes in journalistic practice, and most of all, changes in technology are accelerating, we consequently live in a world in which the very forces that have constructed the right to privacy are changing as quickly as anything we know (13).

In his book *Voyeur Nation*, Clay Calvert, Brench Eminent Scholar in Mass Communication at the Department of Journalism and Director of the Marion B.

Brechner First Amendment Project at the University of Florida, also describes privacy as a social construct:

> . . . A concept created, maintained, and changed by members of society, including, most notably, journalists and others in the media. Our own definition of what information should be private will vary and change from time to time, pushed along by the media's actions in giving publicity to facts some would deem private (78-79).

For Anita L. Allen, an expert in privacy law at the University of Pennsylvania, there is no doubt that privacy boundaries are changing. She considers the openness about medical conditions seen in recent years to be especially striking: "The scope of politics has expanded. If 'the personal is political,' it is also newsworthy" (70).

Ian McAllister, professor of political science at the Australian National University, believes that without any radical changes, the personalization of politics will remain a central feature of democratic politics in the twenty-first century.

> The popular focus on leaders is now commonplace across almost all of the major parliamentary systems, where parties once occupied centre stage. The focus on leaders within parliamentary systems has been so marked over the past two decades that it has spawned a large literature which has variously labeled it the 'presidentialization of politics', 'institutional presidentialization', and 'presidential parliamentarism'. Despite the diverse labels, the common underlying theme of these works is that the operation of democratic systems is experiencing fundamental change, without any concomitant change in their formal institutional structures (1).

Furthermore, political parties play a key role in this practice:

> Parties find it easier to market political choice to voters through a familiar personality, who can promote the party's policies much more effectively to voters when compared to the simple

> dissemination of a press release or through the publication of a policy document (7).

According to McAllister, this trend "is likely to further exacerbate the decline in political parties, since their programmatic function has been absorbed by the major party leaders who, in any event, hold a personalized rather than a party mandate" (11).

If political parties and politicians take advantage of the media and voluntarily expose their private lives, it seems only logical and fair game for the media to cover personal aspects of the lives of elected officials. Allen analyzed two public figures that have put their personal lives forward, who subsequently requested being left alone regarding their illnesses. She concludes their request is understandable, "yet the boundaries they drew were arguably unclear, idiosyncratic, or unreasonable" (75).

Even former French President Nicolas Sarkozy increasingly opened his private life to the press during the 2007 campaign by discussing his marital difficulties, although this country has traditionally been more respectful of privacy, with severe laws that punishes its invasion. Harvard Professor of Political Philosophy Denis F. Thompson believes this practice harms the democratic process "by distracting citizens from more important questions of policy and performance of government." Some go further and state that there is no public interest in revealing aspects of politicians' private lives; the media only do this to satisfy public's thirst for sensationalism (Beaudry, Sorbets, and Vitalis 18).

Allen almost sees privacy as a lost cause in journalism. In an article named "Why journalists can't protect privacy?" published in Craig L. Lamay's book *Journalism and the debate over privacy*, she states "it is plain that respecting privacy will be neither a priority nor a pragmatic, costless consideration for journalism in the current cultural, commercial, and constitutional environment" (70).

However, many journalists and researchers believe that they have "the right to know" such details. The "right to know" is a broad concept that influences journalistic practice but generally represents ethical puzzles for news organizations.

Anita L. Allen describes the public's right to know as flowing from a collection of several distinct rights to know: "the right to monitor the government," "the right to know enough about candidates to make an informed vote," "the right to inspect or obtain copies of government records," "the right to learn important news and relevant history," "the right to hear debate among members of the public," "the right to be informed about the conduct of public figures," and "the right to monitor businesses' and nonprofits' use of public funds and impact on the public welfare" (75). This broad definition may raise large expectations, not only for details concerning health but also information about the character of a politician. Harvard University adjunct lecturer in public policy Marty Linsky notes two arguments for those favoring the coverage of the character of a politician:

> First, that a person's personal qualities and personality quirks affect their decision making, particularly under pressure... Second, they say that we are electing a whole person, not just the public portion of a person, and that voters have a right to know how the candidate behaves in private, with family, free time, and oldest, dearest friends. These qualities are part of the reason people vote for or against a candidate, so the news organization has a responsibility to make them known (85-86).

Following this logic, the public has the right to know the most personal details about a candidate or an elected official, but Jeffrey Olen, author and former professor of philosophy at the University of Wisconsin-Madison, warns that other rights must also be taken into account: "The right to know must be balanced against other rights – the right to privacy, for instance" (8). Olen is not convinced of journalists' abilities to judge which specific information is worth reporting. He observed that sexual behavior of elected officials often has a larger impact on the public's perceptions of a politician than a medical condition might:

> The fact that such reporting could harm a candidate's chances shows that, to many people, sexual morality is relevant to a candidate's fitness for office. Most journalists, on the other hand, think not. But that raises a serious question. Who is the judge – the press or public? (64)

On the other hand, there are profound disagreements about whether sexual behavior should be covered. Michael X. Delli Carpini, dean of the Annenberg School for Communication at the University of Pennsylvania and Bruce A. Williams, professor at the Department of Media Studies at the University of Virginia, studied the coverage of the intimate relationship between Bill Clinton and Monica Lewinsky. They observed there was a minimal public response but maximum media attention on his sexual infidelity and on his opponents' exploitation of this personal failure, which "led to the impeachment of

a popularly elected President for the first time in U.S. history, and turned both the public's and government's attention away from other, more substantive issues" (29).

The examples above briefly show that it is very difficult to make assumptions regarding what the public has the right to know, or wants to know. Olen prefers to talk about a "need to know" rather than a "right to know": "We shall talk about the public's need or interest in reading or hearing about them and the journalist's contract to serve that need or interest" (11).

The British academic quarterly *Parliamentary Affairs* devoted a full edition in 2004 to the ongoing debate about whether the coverage of political figures' private lives is in the public interest, and where boundaries should be drawn. It considered several aspects of the trend: weak partisan identification, the increase in technological developments, the deployment of marketing techniques, the rise of market tabloid media, the personalization of politics, and so on. In the introduction that presented these studies, James Stanyer and Dominic Wring noted that the public and private zones are changing in politics. "Globally, the distinction between the public and private in politics is being reconstituted, with personal disclosure becoming increasingly common and seen as a prerequisite of electoral success" (5).

Mick Temple, a British professor specializing in political journalism, is concerned with the move from public interest stories to stories that interest the public: "Certainly, all newspapers have moved away from a dominant diet of 'public interest' stories – essential information of the public sphere – towards featuring more stories that they believe will attract an audience" (125).

Therefore, even if it is a tradition for American politicians to talk openly about their health condition, the country has not yet regulated this practice and has no plan to do so in a near future. There is no consensus in the United States concerning the obligation of politicians to disclose their health records. Researchers have contemplated a few possible models of forced disclosure; however none of them has been tested or applied. Since no precedent exists, it is difficult to imagine which kind of disclosure system could ever be adopted in Canada. The following chapters will attempt to do so, but it is important to keep in mind that they will represent a first approach to the concept and require further research. The next chapter will address the political aspect of the issue, to determine how politicians should act towards disclosure of their health records, how journalists should report on such information, and which kinds of systems could we implement in Canada to facilitate this process.

Chapter 3

Health disclosure models

As explained in the first two chapters, there is no system in Canada that forces politicians to disclose their health conditions or to undergo any annual examination. This chapter explores the informal mechanisms in place to ensure elected officials are fit for their job. Through interviews with journalists, politicians, political staff, and professors, it explores the views of the interviewees on disclosing health records in Canada and which kind of approach is usually in place on Parliament Hill when a politician is suffering from a significant illness. The interviews demonstrate that there remains a perceived cloak of secrecy in Ottawa concerning the private lives of politicians, as many journalists want to maintain good relationships with their sources. However, this chapter will then show that this tendency has evolved, with changes in journalistic practice and the impact of social media on news content. Some of the gossip that would have stayed in the dark in the past is now on the Internet and therefore becomes part of the public space, which puts pressure on the media to report it. This chapter will also suggest how journalists should treat information concerning politicians' illnesses, and how political staffers and elected representatives should approach health matters in the future. The journalists who have been interviewed in this thesis are among the most experienced and respected in the country.

Which kind of disclosure currently exists in Parliament?

Although there is no obligation for politicians in Canada to disclose details concerning their health, some think that there are, within political parties or in Parliament, procedures or structures in place to ensure elected representatives are fit for the job. Many would hope that at least the health of the prime minister is overseen in some way. However, that is not the case. Medical information, no matter whom it may concern in Parliament, remains private. Scott Reid, a former senior advisor and director of communications for Prime Minister Paul Martin says: "There is a not even a mechanism by which in private, through PCO (Privy Council Office) or DND (Department of National Defence), that the individual health information of a serving prime minister is collected or catalogued in any way." He has no memory of having any meeting or even a discussion regarding the development of an emergency plan in case the prime minister might die or become severely ill. He believes that in a circumstance where the prime minister would be incapacitated, "you would rely presumably on family members, to dialogue with staff, and say we have an issue here," he said. Reid says there was no relationship of any kind between the prime minister's physician and the Privy Council Office or the Prime Minister's office.

> The prime minister had a personal physician from Montreal, then he had another physician in Ottawa if he was not feeling well or something, to prescribe him something. None of those people had any affiliation with the PCO, there was no personal disclosure of any kind, and there was no requirement to be any (personal interview, Reid).

The Privy Council Office did not respond to an interview request for this thesis, which makes Reid's interview particularly relevant and informative.

According to his experience, the only occasion when a government physician is involved in the health of the prime minister is during foreign trips. The Department of National Defence sends a military physician with the prime minister and his team, as a matter of safety. There is a rotation of military physicians appointed on those trips.

> If we went on a trip, an overseas trip, with a delegation sufficient to require the Airbus, we're talking of a large size, then DND would always have on board in addition to the prime minister personal detail – which are RCMP officers – DND would always send a physician, in case of emergency (personal interview, Reid).

As such, these trips offer the only opportunity where other physicians may have access, however limited, to the prime minister's medical information. Retired military physician Karen Breeck said that the prime minister's personal physician has the professional responsibility to disclose some of his health information to the military physician who will follow him during a trip. "Whoever his personal physician was, if there was an active ongoing issue, a concern, he would do a medical handover, as a physician to a physician," she said. Dr. Breeck said that the military physician needs medical information to plan his trip, to know which kind of medication and equipment he has to bring with him. Dr. Breeck added that if she was on a trip with the prime minister and would notice that he is suffering from a significant disease that may affect his duties, she would personally feel obliged to disclose it to her superiors, in the name of public safety. However, it is also clear that there is no clear indication of what would happen with this information, and no guarantee that other military physicians would act the same way.

Ministers and members of Parliament also do not have any obligation to disclose the state of their health. However, the politicians interviewed for this thesis believe that there are informal measures in place to avoid embarrassment to their party or the government. The Liberal MP for St-Paul's, Dr. Carolyn Bennett, appointed as the first minister of state for public health in 2003, remembers there was a vetting process before being appointed to cabinet.

> They ask you pretty well 'is there anything that we should know about you that would be getting the way of you performing your duties or the reputation of the party, and the government of Canada?" and those kinds of things. I have to say that if somebody has a serious health problem or a terminal health condition, or serious drug addiction, they tend to ask it directly. At some point, that private vetting is suppose to get rid of people of a particular issue that could interfere with their ability to carry on their job in a responsible way (personal interview, Bennett).

The Conservative MP for Simcoe-Grey, Dr. Kellie Leitch, is a pediatric surgeon who is still working in hospitals, where physicians have the obligation to report on colleagues who suffer from a disease that may have an impact on their job. "We have the same thing here, it is just among colleagues," she said. She believes there is an informal checks and balances system in place in the House of Commons as well among all political parties. However, she added that the system requires a level of good faith and honesty. "I think my opposition colleagues function very similarly to my own in the government. They want to do good public service, and if for a very specific reason, they were not capable of doing that, they would remove themselves from the role," she said.

NDP MP for Abitibi-Témiscamingue Christine Moore has a similar view. As a nurse, she would feel comfortable giving advice to any MP in the House of Commons if she notices he does not seem to be feeling well.

> In a way, there is solidarity that comes from the fact that in pretty much every caucus, there are health professionals... We frequently see the little details that others do not see, and we know the people who have health problems, sometimes with age some start to suffer from diabetes, sometimes it is obvious, and we have our eyes open and if we see some symptoms, we suggest to them that they should go see a doctor (personal interview, Moore).

Moore said parties are generally quick to address the impact of their MPs' illnesses. For example, if an MP is sick and cannot come in, the e-mail chain will start early in the morning asking for volunteers to fill in. Such a system could however be more problematic for an independent MP who would have to take a long leave, she said, since no one else can oversee his or her constituency files.

There is a clear awareness in Parliament about the importance of health issues affecting elected representatives, but there is no written document on which they can lean to know how to proceed if they face serious health problems. There is no protocol for elected representatives facing illnesses, which means there is no clear protocol either on when they should consider temporarily stepping down. Therefore, an MP or a minister could be suffering from a disease or be under medication that is seriously impairing his ability to do his job, and remain in office. Such a situation could last for weeks or months before colleagues and journalists notice it, and even longer before the situation is reported and action is taken.

Journalistic practice on politicians' health conditions:
Lessons from the past, toward a change?

The lack of procedures regarding the health of politicians in Canada may not be a concern to many people, given the feeling that any significant illness would quickly become a public matter. However, the *Globe and Mail's* public health reporter, André Picard, raised a concern when Jack Layton refused to disclose which kind of cancer he was suffering from, namely that politicians enjoy a "personal cloak of secrecy" in Canada. Picard believes reporters on Parliament Hill were aware of Jack Layton's failing health and could have asked more questions and raised public awareness during the campaign. "Parliament Hill is a community. Journalists interact with politicians every day. Jack Layton was much loved. Everybody was talking about this, but nobody wanted to write about it," he said.

Picard believes journalists should have recognized that this conversation should have never been a private one between journalists, but that it should have been a conversation with the public. He thinks journalists have to remember the reason they have privileged access to politicians on the Hill, and that is to write stories about them for the public, as he did.

> I think there are regrets, I think some people thought, 'why did this guy from Montreal do this story, why did not we do it on the Hill,' that regret exists and that's good. I think the next time there will be less fear, it will be more normal to be asking this question (personal interview, Picard).

Picard considers that Canada is at least twenty years behind the United States concerning the public's right to know. Jeffrey Dvorkin feels that the situation has been going on even longer. Dvorkin is director of the journalism program at the

University of Toronto and the executive director at the Organization of News Ombudsman, after having worked as a journalist in Canada and in the United States. He considers that Canadians are much more respectful of their country's elites than their American counterparts. "We just let them do what they want, and we do not hold them very accountable," he said. Dvorkin remembers that when he worked at the *CBC*'s Ottawa bureau thirty years ago, there were many occasions where he felt that details concerning politicians' private lives should have been made public. However, his colleagues were reluctant to cover such stories, such as when Pierre E. Trudeau's wife, Margaret, was known to be suffering from a mental illness. "It was discussed for about thirty seconds in the bureau whether we should do a story on this, and there was absolutely no indication of wanting to do that story," he said. Dvorkin wanted to do a story that would expose the possible impact on a prime minister's ability to carry out his duties when a family member is unwell. However, Margaret Trudeau was not an elected official and it was decided that she had the right to privacy. Another kind of story that he thought should have been relevant to cover is politicians' problems with alcohol.

> Newsrooms were not very eager to expose the drinking habits of elected officials because they were worried, because a lot of them were drinking together. I think it calls the question on the nature of the relationship between journalists and the elites that they are covering (personal interview, Dvorkin).

Toronto Star columnist Chantal Hébert said that there is still a cloak of secrecy in Ottawa because journalists do not want to risk losing their sources. "People in Ottawa are always obligated to calculate which relationships they can burn in exchange for a story. The story really has to be worth it in order to burn

your relationships with a party," she said. Hébert, however, thinks that this culture of secrecy is much less present in Ottawa now than when she started in 1984. She thinks the main problem with the news coverage of Jack Layton's health was that journalists did not do their jobs properly and did not ask enough questions. She said that journalists were not expecting Jack Layton to become Official Opposition Leader. Therefore they treated him differently than former Liberal Leader Michael Ignatieff and Prime Minister Stephen Harper.

> It is a fact that journalists are generally not satisfied with the first response they get when it does not match what they see. In the case of Mr. Layton we contented ourselves (with that response) partly because it is a very unpleasant question to ask, and because we were assuming that Layton was heading for third place. The problem is that it was assumptions, and the result is that three months after the election campaign, the official opposition had no head, no leader (personal interview, Hébert).

Hébert remembers that she even wrote a column before the election campaign in which she said that it was clear for the NDP caucus that it was either an election campaign with Jack now, or an election campaign the next year without him:

> As New Democrats ponder their options in the lead-up to the March 22nd federal budget, it seems their decision might come down to picking the least bad of two unpalatable scenarios. They can plunge in an uncertain spring election with Layton at the helm or risk going into a campaign in a year or more under an untested leader (Mar. 7, 2011).

She said that no one at the NDP ever told her she was wrong. Hébert thinks that journalists had enough hints and information before the election campaign to know Jack Layton's health was an issue, and should not have hesitated to ask more questions, especially as he had already revealed his prostate cancer to the public, a revelation that even helped him gain empathy.

> We knew he had a problem, we wrote about it, and his staff was not denying it, therefore not lying. Now we become dependent on two truths, the official that we tell the electorate, and the one that we know but that we do not want to know officially. There are consequences on our part. If we do not talk about what we see, who is going to do it? (personal interview, Hébert)

Ottawa University journalism professor Marc-Francois Bernier also thinks there are significant ethical issues with journalists who are too close to politicians and their staff. "We know that there are often 'off the record' conversations, confidences, which has the impact that journalists know things that they do not reveal," he said. Bernier said that if one or two journalists knew that Jack Layton was very sick during the election campaign and decided not to report it, it is even worse than any misinformation that was spread by Jack Layton and his team.

> If there are reporters who knew (that he was facing death) and promised not to say it, it is an ethical problem. Even more for those whose mandate is to inform the public, than for Layton whose first loyalty is his party. Journalists' first loyalty is the public (personal interview, Bernier).

Susan Delacourt, a veteran political journalist on Parliament Hill writing for the *Toronto Star*, does not endorse the cloak of secrecy theory. "I do not like people outside Ottawa telling us how to do things. There is no cloak of secrecy; there is no collusion with the politicians," she said. Delacourt thinks it would be much less sensational to report on a politician's private life today than it was when she started on the Hill 25 years ago. Although asking personal questions to politicians about their health clearly makes her feel uncomfortable, she did not hesitate to do it in Jack Layton's case. Contrary to what Hébert wrote, she does not think that reporters are to blame. Delacourt said there were intense discussions among journalists, including at the *Star*, to find out if Layton was

sicker than he was publicly stating. She remembers her "alarm bells were ringing" when she was given two different stories on the reason why he broke his hip. She said she even went to talk about it to her bureau chief, as those stories were making her feel nervous. "Reporters did (ask questions to Layton about his health) over and over and over again. I know that it was asked all the time. It is just, what do you do when they are lying, or not giving us the whole story? ... How different is that from lying?" she asked. "I think reporters felt a bit burned by that one," said Delacourt.

Klaus Pohle, a Carleton university journalism professor, considers what happened even worse than a lie. He says the electorate was "deceived' during the last election campaign on Jack Layton's health. "I think it is more than unethical. It is a political fraud," he said.

Karl Bélanger, Jack Layton's former senior press secretary, recalls being as open as he could with the media at the time, while acknowledging that it was up to Layton to decide which details to reveal.

> Layton has been as transparent as he could in the circumstances. He announced his first cancer in a press conference, it was made publicly, and he participated in many events after, and he gave the details that he thought were relevant. It was the same thing for his hip, the operation happened several months later, and when journalists were asking questions on his health condition, he responded as best he could with the information that he had and that he thought to be relevant. The second cancer was also announced publicly (personal interview, Bélanger).

The reason for his hip fracture was apparently unknown. Layton seemed to be in good shape during the election campaign, as he switched from walking with crutches to dancing with his cane. He was even playing around with reporters'

questions on his hip, saying that he would "strip" for them, but nobody wanted him to.

> The details of the surgery had so far remained a mystery, with Layton telling Macleans only that he would likely set off airport metal detectors after he underwent surgery to repair a hairline fracture that grew into a fully broken bone. Layton has said the origin of the fracture is a mystery (Smith Apr. 17,2011).

This thesis does not seek to discover the exact nature of Layton's ailment, or to put the blame on reporters or his staff for not clearly telling the public during the election campaign that he was dying, if that was indeed the case. However, the goal is to provide journalists with potential strategies in the event that a similar scenario might occur in the future. The facts are that the NDP leader claimed to be fit for the job during the election campaign and died three months after becoming Leader of the Official Opposition. The mystery of the fractured hip led many physicians to speculate that his prostate cancer had metastasized. Reporters did ask questions concerning Jack Layton's health conditions during the election campaign. There is no official record of all of the exact questions that were asked to Layton during the campaign, and of his answers. Could reporters have asked more questions, and could Layton have given more details on his condition? Possibly, but given Layton's death, those questions will remain unanswered.

How journalists should report on health conditions

This subsection will address the possible avenues for politicians and journalists in the future. There is no agreement on the specific way that journalists should report on politicians' health conditions, but there is a

consensus among the journalists and journalism professors who were interviewed for this thesis that there needs to be serious reflection in Canada on the way we want to approach this issue.

As demonstrated in this thesis, there is no consensus regarding how far journalists should investigate politicians' private lives when it comes to their health, and when the health condition of a politician should become a public issue. This general state of mind is in fact a mirror of the period we are in in journalism, according to Stephen J.A. Ward.

> Moving from a period of consensus on professional, objective reporting to a period of non-consensus on the ethics of journalism as objectivity is questioned. It has entered a revolutionary phase of conflicting values, methods, and practices. Eventually, a new consensus will be established around a new paradigm, a new normative system. Journalism ethics will return to a normal phase (*Ethics for the New Mainstream* 315).

Surprisingly, the treatment of reporters' news stories on politicians' health conditions has never been the subject of any complaint to any of the ombudsmen who were interviewed for this thesis. To represent English and French media, the public editor for the *Globe and Mail* Sylvia Stead and *Radio-Canada's* ombudsman Pierre Tourangeau were interviewed. Furthermore, for a point of comparison and an international perspective, Jeffrey Dvorkin's comments were also collected, as he is Executive Director at the Organization of News Ombudsman and former ombudsman of the *National Public Radio* (NPR) in the United States. None of them recalls having to respond to complaints against journalists about infringing a politician's medical privacy.

Asked about journalistic practice and ethics, Tourangeau said that it would have been relevant for reporters during the last federal election campaign to

investigate further into Jack Layton's health, as his health problems were already in the public sphere.

> According to the electoral context, without harassing him, I think we could have been more curious. I remember that after his hip fracture was made public, we were all talking about it, but I do not remember seeing many articles that were openly asking whether (he was fit for the job) (personal interview, Tourangeau).

Therefore, what criteria should a reporter use to determine if a politician's health is worth reporting? This subsection will concentrate on interviews that will provide paths to follow for reporters who face this situation. *CBC/Radio-Canada's* code of ethics tackles the principle of privacy in its section on investigative journalism.

> We exercise our right of access to information and our freedom of expression within the context of individual rights. One of these is the right to privacy. In situations involving personal suffering and pain, we balance the public's right to know against individual human dignity. We disclose information of a private nature only when the subject matter is of public interest. Without limiting the meaning of public interest, we work in the public interest when we reveal information that helps our audience make decisions about matters of public debate and when we expose illegal activity, anti-social behavior, corruption, abuse of trust, negligence and incompetence, or a situation that poses a risk to the health and safety of others. Some aspects of privacy are protected in law. It varies from province to province or territory; federal statutes cover some areas. CBC journalists must be familiar with the legal aspects of privacy or, when unsure, seek legal guidance (*CBC/Radio-Canada*).

The paragraph above addresses the principle of privacy, including politicians' health conditions. Still, determining when an illness is of public interest may be a challenge, depending on the circumstances. Tourangeau thinks that there are three requirements to determine if a politician's illness should become a public issue.

> 1) Is it an incapacitating disease that risks compromising his capacity to govern? 2) Is it a disease that is threatening his life, in the short or medium term, let's say a mandate of 4 years? 3) Is it a disease that will force him to leave office temporarily, in the short or medium term? (Personal interview, Tourangeau)

The *Radio-Canada* ombudsman says that from the moment a politician decides to announce that he has a significant illness, he should also reveal which kind of illness he has if he stays in office. Still, if a politician announces that he is temporarily stepping down to receive treatment, Tourangeau is not convinced that it is in the public interest for reporters to investigate exactly which kind of illness it is.

Sylvia Stead, the *Globe and Mail* Public Editor, also thinks the public interest in disclosing such information has to be carefully measured. The two basic factors that a reporter has to look for is how important are the functions performed by this person, and how an illness affects his ability to do his job.

> The question always has to be what is in the public interest, as opposed to what's interesting to the public. So you have to understand what is the role of the politician, is this someone who is deciding the faith of the country, is this the prime minister, or is this a school board trustee? Part of it is understanding what the job is and the importance of the job... The more important their role is, the more important this person's health is (personal interview, Stead).

Stead thinks that the new defense of responsible communication introduced by the Supreme Court of Canada in 2009 against libel suits is a good starting point for journalists who are considering writing or reporting such stories. "I think it gives us as journalists a good principle to understand, to really think of these stories, what is in the public interest, and giving people a fair chance to respond to it as well," she said.

In its landmark ruling, the Supreme Court gave journalists a series of useful guidelines to determine information that can be published:

> The defence of public interest responsible communication is assessed with reference to the broad thrust of the publication in question. It will apply where: A. The publication is on a matter of public interest and: B. The publisher was diligent in trying to verify the allegation, having regard to:
>
> (a) the seriousness of the allegation; (b) the public importance of the matter; (c) the urgency of the matter; (d) the status and reliability of the source; (e) whether the plaintiff's side of the story was sought and accurately reported; (f) whether the inclusion of the defamatory statement was justifiable; (g) whether the defamatory statement's public interest lay in the fact that it was made rather than its truth ("reportage"); and (h) any other relevant circumstances (*Grant v. Torstar Corp.*).

Klaus Pohle agrees that this defence could be invoked if a journalist discovers that a politician would be suffering from a significant illness that may affect his work. However, the best option for a reporter to be libel-proof is to have reliable sources. Truth is a complete defence.

> You would have to prove it, with direct evidence, either people who could speak to their medical condition, first hand, such as a doctor, a physician, or another health practitioner, or by affidavit. It cannot be hearsay. If you are going to plead truth, you have to have people with direct knowledge, not just what they have heard. It is a difficult defence, but if you have it you do not have anything to fear (personal interview, Pohle).

However, it would be difficult for journalists to have access to medical records as they are among the most private information, and obtaining such confidences from health care professionals would mean that they would have to break their code of ethics and could face sanctions. This aspect will be addressed in greater detail in the next chapter, which will address the medical and ethical considerations raised by this issue.

Another set of guidelines for journalists to follow concerning health information comes from the *Canadian Press'* internal policies, says Norman Delisle, who had a long career as a political reporter for the CP in Quebec City from 1972 to 2008. He covered the National Assembly during René Lévesque and Robert Bourassa's respective hospitalizations.

He said that the *Canadian Press* has clear protocols to follow before reporting on an elected representative's private life. He said those three criteria guided his journalistic conduct through his entire career.

> That policy had the impact that we were respecting private life including for health matters, unless this private life had direct impacts on public affairs (as when it involved public funds spending).... Or, second condition, it could happen that the private life was made public through exceptional circumstances, for example when René Lévesque had a car accident in 1977 when he was Prime Minister.... And the third condition that was authorizing us to talk about someone's private life was when that public figure decided to put his private life in the spotlight (personal interview, Delisle).

Layton had decided to make his private life public on many occasions, by openly talking about his first cancer or when he allowed cameras in his home. Linguistics professor at the University of California-Berkely Robin Tolmach Lakoff observed that seeing politicians on television could create some attachment from the viewers:

> When someone comes into our living-room and bedroom on a nightly basis, when we hear that person speaking more often than most intimates, it is only natural to confound the two categories and judge them in similar ways (174).

Social media may have a similar impact as television on the electorate. During the 2011 federal campaign, the NDP introduced social media tools to give Canadians direct access to the NDP leader. By texting "NDP" to a given cellphone

number, they could receive direct messages from Layton, and were also encouraged to download a link to the "Jack Layton iPhone app." Layton was also using Twitter, and tweeting most of the time himself, according to Karl Bélanger, Jack Layton's senior press secretary. The day the NDP leader told Canadians at a news conference that he had a second cancer, he wrote on Twitter right after: "Your support and well wishes are so appreciated. Thank you. I will fight this – and beat it."

To journalists, such disclosure makes a difference and opens the door for public disclosure. Susan Delacourt says that a celebrity culture dominates politics, unlike when she started working on Parliament Hill in the 1980s.

> When I first got here, political reporting was seen as a dusty institution. We started looking for various ways to make it interesting and accessible to the public... The politicians started telling us more about their personal lives, to make them seem more real and less distant... I do think the more they put out their own lives, the more you feel like you have to do journalism on it, too (personal interview, Delacourt).

Marc-Francois Bernier, however, holds privacy dear and considers that the disclosure of some private details does not necessarily invite for more. "It is not because we have opened the door on a part of our private life that everyone has the right to rush into the room and go frisk into the drawers... Private life is a door that we open and that we close to those we choose," he said.

Nevertheless, researcher and media commentator on American politics Guillaume Lavoie considers that politicians have to realize that once they put their private lives forward, they have to live with the consequences. "The artists and the politicians who complain that journalists are interested in their divorce, I

say if you do not want the press at your divorce, do not invite them at your wedding."

Founding director of the McGill Centre for Medicine, Ethics and Law, Margaret Somerville says that media practitioners need to ask themselves some questions about their ethics before covering such issues. However, she agrees their coverage is fair game in some circumstances.

> I think to some extent, when you have taken advantage of the media, as promoting what you want to achieve, your life goals, which is usually the case with politicians, you cannot suddenly switch it off, and say now you cannot any longer speculate about me (personal interview, Somerville).

The issue is complex, and it is nearly impossible to come up with iron-clad rules dealing with all possible circumstances. Given that all situations are different and that some are more delicate than others, Delisle considers that a group meeting with his newspaper's editorial team was always the best way to decide if a story was worth news coverage. "It is a question of judgment each time. We have to judge case-by-case," he said.

Bernier, who heads a chair in journalism ethics at the University of Ottawa, said he would measure the public interest involving health issues extremely carefully and make sure that commercial interests are not at play.

> Another ethical question that is raised is the issue of "instrumentalization" (when the news story is used as a tool by the media). It is not just about informing the public, but it is to use this disease to collect benefits as a press enterprise. It is another debate: The "instrumentalization" of someone's private life. It is linked to human dignity, and it raises an ethical debate, it is not only if we decide to talk about it, but also how do we talk about it? (personal interview, Bernier).

Although Hébert strongly criticized reporters for their coverage of Jack Layton's health, she does not want to suggest a specific approach journalists should take in the future if they face such a situation, as she also thinks politicians suffering from illnesses should be treated in a case-by-case manner.

It has been argued here that Canadians are generally more respectful of private lives than Americans, but it's hard to measure. However, André Picard says that the reaction to his column in which he asked Jack Layton to disclose which was the second cancer he was suffering from was "in the vast majority very negative, 90% negative."

> Canadians are very prudish, they are very respectful, they feel bad when someone is sick, they thought I was being a bully and mean, and it is a legitimate position for them to have, but I think, in the heat of the moment, when someone is very sick, it is natural that you are going to get that reaction. But I think if you would step back, and look at the principle behind it and why it should happen, I think people more or less recognize it, and politicians should not be able to hide things. I think there is a slippery slope, if you can hide that you have cancer, what else can you hide? (personal interview, Picard).

Chantal Hébert recognizes that the public may not have felt like reading about Jack Layton's health, especially since there was a general feeling of sympathy toward his situation. However, she said that journalists' job is not to write what readers want to read at a specific time, but to give them accurate information that will help them in their decision making. It is clear for the *Toronto Star* columnist that Jack Layton's illness had a direct impact on his ability to fulfill his duties, and that it was relevant for the electorate to be better informed about it, especially that they were only having the NDP's version of events on his health condition. "We are there to give relevant information for the

choices they make for an election campaign. I think it is relevant to know if someone who has had a significant health problem is capable or not to do its mandate."

Picard is on the same page as Hébert in thinking that Canadian journalists should have asked many more questions, but he is confident Canadian reporters will act differently the next time such a situation occurs. "I think a lot of barriers have fallen, taboos have fallen," he said.

> We do not have a lot of privacy anymore, by choice, essentially, but more and more by tradition. People are on social media all the time... I think we are adjusting to that and I think that politicians have caught up with that reality of a newer generation that is going to be the norm (personal interview, Picard).

The impact of social media is an important element to consider in changes to the way that journalists report on private lives. Rumors and gossip published on Twitter may provide story ideas that may appear in newspapers, according to Marc-Francois Bernier.

> Traditional media is competing with social media and reacting to it. In the past, traditional media could avoid the rumors that they were hearing left and right in the bars, but now the rumors are in the public space, traditional media cannot ignore them. This may often please them not to ignore those rumors, they can argue that there is obviously an interest in this topic, people are talking about it on social media, we are going to investigate and publish the accurate information (personal interview, Bernier).

The distinction between the public and private spheres is not only blurred for politicians, but it is increasingly a reality for the general population. As of December, 2012, Facebook had more than a billion active users. Most of them are posting details about their personal lives on a daily basis, providing information that just a few years ago was only accessible through individual conversations, on

the telephone or by mail. The pictures that we preciously held in our photo albums at home become the property of Facebook if we choose to post them, like millions of users do every day, on this social network. "Information that was once scattered, forgettable, and localized is becoming permanent and searchable. Ironically, the free flow of information threatens to undermine our freedom in the future," warns law professor Daniel J. Solove (4).

Some researchers are already concerned about the role of journalists when political messages are published through social media. This role

> . . . Becomes even more important in circumstances where political message is transmitted through the two realities – the real and virtual one. Its work will focus on how political tactics are changed and how the strategy evolves along with the future politicians. Also the discussion forums will require special moderators in order to assure balanced points of view. It may be remarked, along with the information explosion, that political journalist may have to deal with a lot of rumors and unverified information (Glodeanu 137).

Klaus Pohle is surprised to see how private information on social media may spike the interest of the general public. "There is nothing wrong with reporting on people's private lives, as long as there is a point to it," he said. Pohle believes politicians should be more open with their health conditions, which would prevent them from becoming the subject of speculations in all kinds of media. "I think it would be in a politician's best interest to be upfront about these things," he said.

Researchers are trying to evaluate the impact of social media on journalism, as it is moving quickly and news-consumption habits are constantly evolving. The inclusion of citizens in the public debate is considered as the "fifth revolution" in journalism.

> We are in the middle of the fifth revolution in journalism ethics since modern journalism began in the 17th century. The rise of Internet-based media is a revolutionary event because it substantially alters the prevailing professional model of the j-c-p (journalists-communication-methods-public). The journalistic element of this relationship is transformed to include, for the first time, ordinary citizens in great numbers. It becomes a sphere of professionals and non-professionals of varying ability, training and motivations (Ward, *Ethics for the New Mainstream* 317).

Jeffrey Dvorkin fears social media and the Internet will play against further disclosure of elected representatives' private lives in Canada. "I do think that Canadians need to know the state of health of their elected leaders," he said. However, he says the period of transition has the effect of making "people more aware of how intrusive the Internet is in their lives," he said. "There is a huge reaction now against what is responsible journalism, how freedom of speech affects issues around privacy, what about the question of accuracy, what if the media gets it wrong?" he said. Dvorkin believes a politician could use that public sentiment against invasion of privacy as an argument not to disclose details on his health.

Which approach should politicians take?

Guillaume Lavoie feels there is a widespread perception that needs to be corrected in Canada regarding the disclosure of a politician's health records. "The comparison that is made with the United States is false," he said. Lavoie noticed there is a general sense in Canada that medical disclosure is required of American politicians, but he underlines, as it was previously done in this thesis, that there is no law in the United States forcing full disclosure of health records. Therefore, politicians can also hide details concerning their health, which means

asking for a U.S.-style system is asking for something that does not exist. "The comparisons made at that time were made by people who did not fully understand the American context," he said.

> There is no obligation. It is a political test. The candidate's health is a political issue in the same way that it is to answer questions on foreign policy. The idea that the electorate's decision is based on one single issue is completely disconnected from the reality. It is the candidate and the political context that determines what has to be put upfront (personal interview, Lavoie).

In Lavoie's eye, the information provided by the White House on Barack Obama's health is not relevant, considering his overall good health. American reporters find themselves writing about his low cholesterol level and so on. He said that medical information becomes more relevant when politicians become older or have had previous medical problems. "There needs to be a political assessment of the situation. I am relatively comfortable with the fact that a political calculation is made based on the situation," he said.

The political system is also different in the United States, which makes it harder to compare with the Canadian situation, according to David Salisbury, director of medicine, Civil Aviation, at Transport Canada. He is at the head of a committee of physicians who practice regulatory medicine and decide if pilots have the right to fly. Salisbury believes requirements of any kind could not be easily applied to politicians, as there is enough redundancy in the Canadian system to ensure politicians are not overly powerful, contrary to the United States. He also considers it would be arduous to justify mandatory medical standards for politicians in front of the human rights commissions, as is the case for the Canadian Forces and for the other pilots. "I think it would be very difficult

to come with a set of standards that everyone would buy into, and I think it would be even more difficult to administer it in a way that would not run above our existing laws," he said. He also believes that those who would be in charge of such a system could be accused of bias, considering the nature of politics. "I'm not sure that we should give a panel of doctors the right to say: this guy can run and that guy cannot," he said. Salisbury considers that the electorate has a "certain right to know," but does not know where the line should be crossed and how such a system could be established.

Dr. Karen Breeck, a physician who retired from the Canadian Forces in 2009, where she mainly examined pilots, is concerned with the absence of a system in Parliament that could certify that elected representatives are mentally and physically capable of doing their job. She believes there are three reasons why a politician should be transparent with his constituents on his health condition. First, as an individual, continuing to work while dealing with a serious disease may be very damaging to his own health and his chances of survival. Second, as taxpayers pay their MPs' salaries, she considers there is a public accountability issue that needs to be addressed. Third, the risk of hurting others should be taken into consideration.

She believes members of Parliament should be following a code of ethics specifically built for health issues, to ensure they are fit for the job. Such a code would not necessarily prevent politicians from hiding their physical condition from the public, but it would raise awareness about the medical standards to respect. As the Canadian Forces asks physicians to evaluate each employee with formulas (Appendix A) created specifically for every profession, a similar

document could be created to determine which health conditions an elected representative should meet. The politicians' physicians should be informed about this form, which would make the issue easier to discuss. The ultimate decision to go public with it or not would belong to the politician. Such an ethics code could also give a model for journalists to follow, which would give them indications on what are the health conditions that are relevant to report and susceptible of having an impact on public affairs.

Radio-Canada's ombudsman, Pierre Tourangeau, also considers it is an ethical question that should be addressed in the elected representatives' code of ethics, which would encourage them to reflect on the possibility of releasing details on any illness that would prevent them from fulfilling their duties. He believes this question should be the responsibility of the ethics commissioner in Ottawa and in different provinces.

> I think if we would give this question to ethics commissioners, it would respect their private lives, their intimacy and the public interest. That would also allow elected representatives who face those kinds of situations to consult someone who could help them to make a decision, whether it is to disclose the disease or to keep it secret (personal interview, Tourangeau).

Another possibility would involve the creation of an internal system that would not require disclosure of health records to the public but that would include internal health evaluations and the ability to report a colleague who becomes unfit for the job. Four of the seven physicians interviewed said they found that this approach could be feasible, if done thoughtfully.

Dr. Jean-Bernard Trudeau, deputy secretary general at the Collège des médecins du Québec, considers "neutral and credible mechanisms that would

ensure that the exercises of reasoning and judgment are not distorted by an illness" could be "healthy" in politics. However, if such a system was to be established, he said it would be important to consider its implementation very carefully. This practice would need to be rigorously structured.

> If a strong orientation was to develop in that direction, if there was a political or societal will, I do not think that it could happen in a improvised way, but societies would have to evolve, the medical associations would have to analyze this question because there are professional challenges, and we would need to develop guidelines, to regulate such practice, and to guide the exercise of the physicians' clinical judgment with disclosures like those (personal interview, Trudeau).

Even if there would be such system, Trudeau said its potential limitations should be taken into consideration. Physicians have such a system, but there is still a lot of work to do among professionals who are reluctant to report a colleague who is too sick to do his work. Therefore, such culture can take time to establish and may not be completely effective.

Former Quebec Health minister Dr. Yves Bolduc thinks that in exceptional situations, there could be a mechanism to evaluate the health conditions of elected representatives, particularly of prime ministers or high-profile ministers. Bolduc is reluctant to endorse any form of public disclosure but he believes one argument that could be invoked for the implementation of an internal system is the dangers posed by an ill leader to his colleagues and the state. "If you go in that direction, there should be a rule, when someone thinks that someone else could represent a danger, for himself or others, when there are worrying signs, then there could be a place, for example the jury-consul in Quebec, who would be informed of those signs," he said. This process would lead to the politicians'

health examination. The MLA for Jean-Talon, however, thinks that this process should stay within the government and should not be made public, as the announcement that an elected representative had to undergo an evaluation may cause him prejudice.

Dr. Carolyn Bennett saw Jack Layton's death in office as a clear indication Canadians need to have "an honest conversation about this." Disclosure of medical records seems a bit excessive to her, but at least a checks and balance system in Parliament with yearly evaluations would be something to consider.

Professor Pohle is the only one who is convinced that disclosure of politicians' health records should be forced through legislation, because the electorate has the "right to know" and those who put themselves up for public office lose a part of their privacy. He thinks all MPs and MLAs should make their health records available to the public, with a time limit of ten years. "I want to know if my MP cannot do his job because he is very ill. It is my right to know, actually," he said.

None of the reporters interviewed thought that full disclosure of health records should be forced through legislation in Canada. André Picard feels that politicians simply need to do the right thing, which is being transparent.

> It should be done by tradition, and by obligation, because it is the right thing to do. Even in the U.S. there is no law that says the president has to reveal his annual checkup, but if he did not do it, it would be unthinkable. The public would say: "You're hiding something, what is going on?" It would be much worst, we do not need laws to do this, and it should be common sense. People who want the trust of the public should be open with the public (personal interview, Picard).

In Picard's view, the public should have details on a politician's illnesses and his treatments as soon as it has an impact on his ability to govern. However, he wants to make it clear that a broken toe is irrelevant and that there should not be cameras on a politicians' deathbed. "Journalists should not be voyeurs," he said.

Susan Delacourt fears full disclosure would be too much to ask of politicians and would discourage some from running, but she thinks more transparency is required. "If you are asking people for their trust, I think you have to be honest about things. A lot of us were forced to revisit some of our reluctance (about asking this type of questions) when it was clear that Layton was ill when he was saying that he was not," she said. Chantal Hébert does not argue for full disclosure of politicians' health conditions, as she is afraid each little health problem would become a reason for someone not to be elected. Norman Delisle thinks it would also infringe on elected representatives' right to privacy and thinks it is unlikely that Quebeckers, at least, will go in this direction. "It is a mentality that is completely different and we do not have it here. We do not have it here in Quebec," he said.

However, differences between the English language and French language media in Canada may be evolving. Marc-Francois Bernier considers that Quebec media content is getting more and more similar to general media content in the rest of Canada.

> The American tradition has had more influence in English Canada than in Quebec for a long time, but I would say that this frontier is diluting. Before, Quebec journalists had less access to English media, but now we do speak English. I think there is some kind of absorbency between journalism ethics in the United States, in English Canada and in Quebec; there is some kind of penetrability and normalization that is happening (personal interview, Bernier).

Overall, five large categories emerged among the interviewees on what politicians should do regarding the disclosure of health records. Only one person thought disclosure of medical records should be forced through legislation. Four interviewees are ready to explore the idea of establishing an internal system in which colleagues would have to report ill politicians - which could then lead to a requirement to undergo a medical evaluation. Two interviewees thought disclosure of medical records should become a tradition like in the United States. Two proposed the idea of a code of ethics, and thirteen suggested politicians should feel a moral obligation to disclose any illness that impairs their work, but the decision to disclose it is up to the politicians and their ethical standards. An interesting finding is that ombudsmen, journalists, politicians, physicians and university professors all fall in different categories, which means there is no consensus among professions on this issue. There is a general consensus that a politician suffering from an illness that impacts his ability to do his job should disclose it to the public or at least step down temporarily. The next chapter will examine the medical aspect of this issue and which illnesses could be considered to be of public interest, therefore being a threat to an elected representative's work and public life.

Interviews results

A law should force disclosure of health records	We should consider establishing an internal check and balance system	Disclosure of health records should become a tradition, like in the U.S.	Politicians' approach on their health should be guided by a code of ethics	Disclosing health issues is a personal decision, but should become public under specific circumstances
Klaus Pohle	Yves Bolduc	André Picard	Karen Breeck (2)	Norman Delisle
	Jean-Bernard Trudeau	Jeffrey Dvorkin	Pierre Tourangeau	Karl Bélanger
	Carolyn Bennett			Chantal Hébert
	Karen Breeck (1)			Kellie Leitch
				Christine Moore
				Susan Delacourt
				Marc-Francois Bernier
				Sylvia Stead
				David Salisbury
				Margaret Somerville
				Guillaume Lavoie
				Stan Kutcher
				Scott Reid

Chapter 4

Disclosure of medical conditions:

What should they disclose, how, and why?

As the debate surrounding the need for Jack Layton to disclose his health conditions demonstrates, the next high-profile Canadian politician who discloses or who has health problems may face a tougher ride. Through interviews with physicians, elected representatives and former candidates who are also physicians, political staff, journalists and researchers, this chapter will focus on the medical aspect of the issue. It will look at the challenges physicians may meet if questions from journalists intensify regarding the health of elected representatives. It will suggest situations when a physician has the right to disclose a patient's private information, and what options a physician faces whose patient is the prime minister, suffering from an important illness that he wishes to keep secret. It will then tackle the consequences for a physician if he chooses to disclose this information, and also the consequences faced by a journalist deciding to publish a leaked diagnosis. This chapter will then provide examples of other jobs in Canada that require medical disclosure, and which medical conditions could be considered as a threat to public safety. Finally, it will propose a range of illnesses that would make a high-profile politician incapable of doing his job that should be disclosed with the politician stepping down during treatment. As a starting point, I will mainly be using hypotheses involving the prime minister of Canada and politicians at a federal level who are in a position to make major decisions. The results of this research can also be applied to

politics at other levels, but illness facing a prime minister is the most common example used in my interviews to compare responses.

Disclosure of health conditions: The role of the physician

If health conditions became a campaign issue in Canada as they do in the United States, a candidate or an elected representative could decide to disclose a copy of his tests results provided by his doctor, or to ask for a copy of his health records. It could even reach a point where doctors would, with the patient's consent, give interviews to journalists. However, even if a politician wished to discuss his health condition, physicians do not have clear and precise protocols to follow to give interviews without infringing on the credibility of their hospital or their profession. As explained earlier in this thesis, the Canadian Medical Association refused to participate in this research project. Its code of ethics, publicly available on their website, does not make any mention of the media, but is quite clear about confidentiality. "Avoid public discussions or comments about patients that could reasonably be seen as revealing confidential or identifying information" (*CMA Code of Ethics* 3). In comparison, the American Medical Association has a complete section dedicated to relations with the media, which gives its members general guidelines. "Opinion 5.04, Communications Media – Standards of Professional Responsibility," specifies that when a patient consents to release his information, the physician should be as cooperative as possible with the press to ensure accuracy.

> The physician may release only the authorized information or that which is public knowledge. The patient-physician relationship and its confidential nature must be maintained. With these

> considerations in mind, the physician may assist the representatives of the media in every way possible. When the patient or authorized representative consents to the release of information, physicians should cooperate with the press to ensure that medical news is available more promptly and more accurately than would be possible without their assistance. Inasmuch as a diagnosis may be made only by a physician and may depend upon X-ray and laboratory studies, no statement regarding diagnosis should be made except by or on behalf of the attending physician. For the same reason, prognosis will be given only by the attending physician or at the attending physician's direction (*AMA Medical Code of Ethics*).

The case of Paul Tsongas described in chapter one (32) provides an example of what can happen as hospital officials took a part of the blame for the incompleteness of information about Tsongas' health provided to the media.

> Hospitals officials also acknowledged some culpability. In the future, when a public figure waives the confidentiality, the Dana-Farber Center will write a summary of the medical record, and doctors unconnected with the case will review the summary before its release. The patient will have no role in writing or editing the report (Abrams, *Presidential Health and the Public Interest* 803).

Interviewees were asked about several scenarios to analyze the potential consequences Canadian physicians may face in such a case. One scenario involved intensifying gossip in Ottawa that a politician is suffering from lung cancer. This elected representative could choose to disclose tests results showing that he is not suffering from this type of cancer. However, nothing would prevent him from hiding other tests results revealing that he suffers from another illness, such as a degenerative disease. Suffice it to say that his doctors would find themselves in a delicate situation; their names and the one of their medical institution would be quoted in the media, as it would figure on the medical report. However, they would not be in a position to correct the information. To push this example further imagine that the Prime Minister of Canada is suffering

from paranoid schizophrenia and stopped taking his medication during a national crisis, or that Canada's finance minister is diagnosed with Alzheimer's disease.

Although physicians have the right to disclose information to authorities in certain circumstances, such as when a patient expresses his intention to harm himself or others, the prime minister's physician does not have a duty to report the information to authorities. Neither does the finance minister's physician. In each jurisdiction, physicians can only breach their patient's privacy under strict rules and conditions. The general ethical rule submitted by the Canadian Medical Association states:

> Disclose your patients' personal health information to third parties only with their consent, or as provided for by law, such as when the maintenance of confidentiality would result in a significant risk of substantial harm to others or, in the case of incompetent patients, to the patients themselves. In such cases take all reasonable steps to inform the patients that the usual requirements for confidentiality will be breached (*CMA Code of Ethics* 3).

The question to then ask is when does the illness of a politician represent "significant risk or substantial harm to others"? Margaret Somerville points out an "important case" in the Supreme Court of Canada, *Smith V. Jones*.

> It is really important to start from this basic presumption that everybody's got the same rights to privacy of their information. But that in certain cases, in the interest of the community or the public or of safety, you might be able to ask for an exception (personal interview, Somerville).

During an interview with a psychiatrist, a person accused of aggravated sexual assault admitted in detail his plan to kidnap, rape and kill prostitutes. The psychiatrist informed the defence counsel that the accused was a dangerous individual who would likely commit future crimes. However, the psychiatrist

afterwards learned that his concerns would not be addressed at the sentencing hearing. Concerned for the public safety, the psychiatrist took action and the case went up to the Supreme Court, which concluded that under specific circumstances, the solicitor-client privilege is not absolute. The Court also identified three factors that should be taken into account to protect public safety:

> The solicitor-client privilege is a principle of fundamental importance to the administration of justice. It is the highest privilege recognized by the courts. However, despite its importance, the privilege is not absolute and remains subject to limited exceptions, including the public safety exception. While only a compelling public interest can justify setting aside solicitor-client privilege, danger to public safety can, in appropriate circumstances, provide such a justification. Three factors should be taken into consideration in determining whether public safety outweighs solicitor□client privilege: (1) Is there a clear risk to an identifiable person or group of persons? (2) Is there a risk of serious bodily harm or death? (3) Is the danger imminent? (Smith v. Jones).

Analysis of this judgment by law professor Adam Dodek includes comments particularly relevant to this thesis. He observes that "the Supreme Court's decision nationalizes the public safety exception," (*The Public Safety Exception* 312), but he thinks these provisions are too narrow.

> By focusing on a client's intention to commit a "crime" rather than on "public safety" more generally, they do not provide for disclosure in circumstances where no crime is committed but a clear, serious, and imminent threat to public safety exists. For example, a lawyer or an expert may have knowledge that a building is likely to collapse with people inside. This may or may not be a crime but surely is a clear, serious, and imminent threat to public safety. The effect of the Court's decision on the continued validity of mandatory public safety disclosure provisions found in law societies' rules of conduct is not clear. The Court's articulation of a test for permissible disclosure for solicitor-client privilege arguably provides the starting point for disclosure... The Court failed to identify reasons why lawyer disclosure should be permissible and not mandatory and this left the continued validity of the mandatory disclosure provisions uncertain. The Court also left open the possibility that

> other exceptions – such as national interest – may be recognized (312-313).

As this judgment is not clear to some and leaves doors open, it is logical to think that disclosure in the name of public safety will keep eroding the constraints of confidentiality and privacy, or will at least be the subject of further examination and clarification. Therefore, other kinds of required disclosure to protect public safety may arise in the future. Exceptions that allow medical disclosure for public safety arise in different cases such as the one mentioned above, for some patients with HIV/AIDS, or for those with uncontrolled epileptic seizures. As there are some legal exceptions concerning disclosure of medical information in several jurisdictions, Dr. Jean-Bernard Trudeau thinks that the possibility that a prime minister would become incapable to fulfill his duties should be examined by medical ethical committees to determine what a physician confronted with such a situation should do. Dr. Trudeau is the deputy secretary general at the Collège des médecins du Québec, he is the past president of the Quebec Medical Association and has served on the Executive Committee of the Canadian Medical Association.

> A physician who would diagnose a prime minister with advanced symptoms of dementia will have to ask himself questions. I think he would have to ask advice to his professional association. He could even consider breaking the professional secret (personal interview, Trudeau).

In such a case, Dr. Trudeau believes that the physician would have to balance the interests of the individual against the interests of society to make his decision. Breaking patient confidentiality, however, could mean that the physician would be taken to court or before the disciplinary body of the College of

Physicians and Surgeons. Nevertheless, Dr. Trudeau thinks that medical codes of ethics have been evolving and will continue to so. He believes that the current cases of mandatory disclosure to prevent harm could be expanded to other matters of public interest, such as when a prime minister is suspected by his doctor to be a danger to his nation.

Conservative MP Kellie Leitch, who is also a pediatric surgeon, has a different view on what a physician should do in such a situation.

> It places a physician in a challenging circumstance but at the same time the letter of the law is very clear. We are not to disclose private information with respect to patients. And so as much as I may have a different opinion, I may, I may not, but I do not have a course of action (personal interview, Leitch).

The Member of Parliament for Simcoe-Grey believes the idea of disclosing health records for elected representatives is a slippery slope that could lead to problems. "The health records are owned by the patient," she said, and she believes it should remain that way even if the prime minister suffers from an illness.

Dalhousie University psychiatry professor Stan Kutcher is also preoccupied by the consequences of such an extension of the duty to report. "As soon as we have the State starting to control health information, that you make decisions based on people's health information, then it's open to all sort of abuse. It's a big concern," he said.

Marc-Francois Bernier, holder of the Research Chair in Communication of the Canadian Francophonie, specializing in journalism ethics (CREJ), is already concerned about the statements of physicians on all-news channels. He believes they should be very careful when being interviewed about an illness that

a public figure has or could have, as happened with Jack Layton. "They cannot start making diagnoses on air concerning people that they have not met, and they cannot do it either with people they have met because of medical secrecy," he said.

In his final days, Jack Layton uncomfortably watched doctors on television trying to offer a general diagnosis of his second cancer, while he was fighting for his life at home in Toronto. "It was a bit frustrating because there is a normal reaction from the ill person to want to correct the information given," said his press secretary Karl Belanger, who was also his good friend. "When we face a severe illness, it is something really personal, something that is not necessarily interesting to share with the rest of the population, and especially not to see scrutinized in the media... I think there is a limit that you need to respect concerning private lives of people," he said.

In Canada, there is no system that monitors that politicians are fit to govern. The electorate has to count on honesty and vigilance. A prime minister suffering from dementia could, however, be too big a secret for a team of physicians to keep who may feel a need to leak it to a journalist. Klaus Pohle considers that a journalist who published such a story could not face legal action if he can prove it to be true, with sources ready to testify for him.

> If you're going to make allegations like this, you better be what we call libel proof. And you got to have incontrovertible evidence that what you say about this person is in fact a fact. So if you are going to make serious allegations like that, you need verification of sources. If you cannot prove it 100 percent true, you can plead that new defense of responsible communication in the public interest (personal interview, Pohle).

Guillaume Lavoie, a Member and Researcher-in-residence at the Center for the U.S. Studies of the Raoul-Dandurand Chair in Montréal, worries that such practice would create a dangerous precedent for other professions. "Canadians should be very careful of what they ask for," he warns. "I do not want my employer to ask me to give him the results of my medical exams to find out if I will die in two years. I do not want that to happen, and I do not think it would be useful to the public... If it's good for an MP, it should be good for everybody."

Margaret Somerville also sees a danger in this practice. "In actual fact, it is probably much more dangerous to have health care professionals who are medically ill in a certain way than it is to have politicians," she argued. "And what about judges? They send people to jail for life, sometimes," she added.

Examples of required disclosure in the workplace

However, there are many employers in Canada who require a certain level of medical disclosure from their employees. While most cases are justified by public safety, it is common that big companies ask their chief executive officers to undergo medical examinations. Some private companies even pay for their employees' annual tests.

> It already exists in big companies, where they require a medical exam every year... Without revealing the names of those large enterprises, there are places where people were not able to manage properly anymore. That person had been removed from his director position to go get treated, and was brought back once treated. This was not necessarily made public (personal interview, Trudeau).

There are all kinds of medical requirements that apply to different jobs. For example, police officers, members of the Canadian Forces, and some nuclear

industry workers must prove that they are in a proper medical condition to do their job. There are some obvious requirements for certain occupations to make sure that employees do not harm themselves or others. One of the best known is that airline pilots must have excellent vision. Those kinds of requirements constitute a bona fide occupational requirement.

> A bona fide occupational requirement (or BFOR, for short) is a standard or rule that is integral to carrying out the functions of a specific position. For a standard to be considered a BFOR, an employer has to establish that any accommodation or changes to the standard would create an undue hardship.... When a standard is a BFOR, an employer is not expected to change it to accommodate an employee. However, to be as inclusive as possible, an employer should still explore whether some form of accommodation is possible anyhow (Canadian Human Rights Commission – Appendix B).

David Salisbury is director of medicine, Civil Aviation, at Transport Canada. He considers himself to be practicing regulatory medicine, which means that he does not only work for his patients, but mainly for Canadians to ensure their safety. There are approximately 700 physicians in Canada who can work as Civil Aviation medical examiners. Those physicians examine pilots and have the responsibility to inform the minister on their patients' health, and suggest whether they should receive or renew their medical certificate that allows them to fly. For example, airline transport pilots and commercial pilots must undergo medical examination every 12 months, and every six months after turning 40. Some cases are harder to evaluate than others, and when it is the case the situation is brought to David Salisbury's team.

> Under the Aeronautics' Act, the minister, in this case, has the power to ask for any medical information that he wishes or that he needs in order to make the decision. We do a screening medical at one

> level - that is what happens to everybody- then people who have certain conditions, we ask for a little more, we can ask for their hospital records, for their treatment records, other tests, for scans, anything we need in order to come to an appreciation of how sick they really are, or what the state of their condition is right now, and then we make a regulatory decision (personal interview, Salisbury).

The minister may also ask for more medical tests or examinations at any time, to determine if a pilot still meets medical requirements. Having good vision is one of the most commonly known criteria a pilot has to meet, but there are many others, from ensuring there is no alcoholism to mental illnesses.

> Let's say someone that we would not certify: seizure disorder, even if they are well medicated. Cardiac disease, in the immediate year after the heart attack, usually we are not going to let them fly.... Similar thing with addiction with alcohol... But if they get treated and they go dry, and we can follow them up, over a 2-year period, we will allow them to go back to the cockpit. Most of the psychoses, we would not allow people to go back in, and the main reason for that: (they are) unpredictable, even with treatment, (we) do not know when they are going to have their next problem. For example manic depression, bipolar disease, not good, not because of the depression, it is mainly because of the mania side, they think they can fly under the Golden Gate Bridge, they think they can do anything, so we are not likely to let them fly in that situation. But people who have an episode of depression and it is well treated, yes we let them back after about 3 months of observation. It also depends on the medication they are using... It is a wide spectrum (personal interview, Salisbury).

Transport Canada, however, often appears before the Canadian Human Rights Commission to explain decisions taken by its physicians, which means all cases need to be rigorously examined and justified. This is one example of a profession that requires transparency concerning health conditions. Physicians themselves also have the duty to report other physicians who suffer from medical conditions that can affect their work, as occurred with Dr. Trudeau.

> It already happened in my career that I had to request that a physician would have to be examined by another physician, and that I had to be reassured by the physician's report saying that he was completely fit for his job. As long as I did not get the report, I did not authorize him to exercise his normal duties in the hospital (personal interview, Trudeau).

The most obvious reason for such rigorous examination is public safety. Can such an argument be sustained for politicians to ask them to prove to those who chose to employ them, the constituents, that they are capable of fulfilling their duties? Is an ill politician a threat to public safety? While the interviewees generally agree this could not be the case for backbenchers, there is a concern over politicians in higher offices.

Illnesses that a politician should consider disclosing

This section of this thesis identifies the illnesses that may have a significant impact on a politician's ability to do his job. Most university professors and journalists did not feel knowledgeable enough on the specifics of individual illnesses to lay out a full list that would require disclosure. Physicians did not want to stigmatize illnesses, as some have different impact on different patients. However, some put forward broad categories of illnesses that are likely to influence a politician's ability to govern. Another aspect worth specifying is that all the physicians interviewed opposed a system that would force the full disclosure of elected representatives' health records. The list of illnesses is therefore incomplete. Still, it can provide general examples that politicians and journalists can use if confronted with a situation where they are left wondering if an illness is of sufficient public interest to suggest disclosure.

During those interviews, they were asked to name illnesses that a high-profile politician in a decision-making position would have to disclose, based on risks they could pose to the public. Of seven physicians interviewed, four have experience either as political candidates or as elected representatives in different political parties.

One of the most important findings is that a majority of them believe a mental illness is much more likely to have an impact on a politician's ability to fulfil his duties than a physical one. Five agreed on the potential risk to the public of a high-profile politician suffering from a severe mental illness, while four agreed – to different degrees - on the need for a mechanism to prevent such a scenario happening. Among journalists, there is a general consensus that any disease that seriously compromises a politician's ability to do his job and that has an impact on public affairs, should be disclosed to the public or lead to the politician resigning (that may be temporary, depending on the situation).

Dr. Karen Breeck spent her career examining pilots. Canadian Forces members must undergo continuous medical examinations, but their medical records are not given to their employer. "We do the diagnosis, but then we have to translate that in how it impacts in their workplace, and translate it into medical employment limitations, and that is the only thing then that is disclosed," she said. Therefore, irrelevant information like an employee who contracted a sexually transmitted disease is not disclosed. She suggests there is a risk that politicians who are mentally ill or under heavy medication may be hurting others, especially those who are in important decision-making positions. Similarly to the Canadian Forces where another medical examination is also

required before getting promoted, the prime minister, the governor general and the minister of defence should have medical examinations, because of the nature of their jobs.

> I am thinking, giving orders, going to war, sending troops to places, sending Foreign Affairs, RCMP, those kinds of people to dangerous places, when you did not understand what you were doing because you were incapacitated. As a federal government employee, I would expect that there are some checks and balances, that a crazy person is not sending me some place. We still do control fighter jets that can have bombs that can be ordered to shoot down other planes, and drop bombs on things... When the prime minister is on pain medicines, when he had a colonoscopy and they gave him medicine – and he does not remember it – but that still takes 3 to 6 hours to get it outside of your system, who's decided it is out of the system, who's decided ok now you are going to make those decisions, now you are not impaired. Where are checks and balances when someone is impaired? (personal interview, Breeck).

Dr. Breeck recalls she and her Canadian Forces colleagues felt uncomfortable when former Liberal defence minister John McCallum was not allowed to board an Air Canada plane in 2002 because he had been drinking. "There were a lot of questions on our hands. When we get the order to go somewhere, how do we know he means it, is he drunk, who is looking after us?" she asked.

Dr. Salisbury agrees mental illnesses and addiction problems can become a serious concern for elected representatives.

> Most of the psychoses, you know, God is telling them to do something, or, whatever, I do not think that kind of person should have their finger on something that is safety critical. Should people who have addiction problem, with addiction behavior (be in office)? At some point in that addiction, that person will do almost anything to satisfy the addiction. They are not thinking rationally... People who are addicts cannot say no.... They are just not capable of making that decision the way that we would like to think they could. Those people could pose a risk if they have unlimited power to do stuff. But again I would argue that for the most part in Canada we

> have set up enough checks and balances, I mean no single individual is going to be able to do something that is irreversibly damaging to the nation (personal interview, Salisbury).

Dr. Salisbury does not think that any physical disability would be significant enough to require disclosure by politicians, and believes that it would be difficult to require disclosure for health conditions that only involve a possible sudden risk of death or incapacitation, as it the case for pilots. There are only two pilots in one cockpit, which makes their medical fitness essential, while there are much more back-ups in Parliament for politicians.

André Picard, the public health reporter for the *Globe and Mail*, does not share that view on the issue. As he wrote before Jack Layton died, he believes that a politician should disclose any significant illness that might affect his performance work.

> We have to know issues that can affect their job, if they have cancer, serious mental health problems, degenerative disease, Parkinson disease, or MS (multiple sclerosis), things like that that could affect their work and their decisions – we should know about it... Degenerative diseases, dementia, things that can really impact the ability to work physically and mentally, ... severe depression, I think they should disclose it to get time off work, be treated and then come back, I think it should be part of our system (personal interview, Picard).

Pierre Tourangeau, *Radio-Canada*'s ombudsman and a former senior reporter and manager at the public broadcaster, argues that what a politician decides to disclose in the media depends on his job and on the gravity of the illness.

> Alzheimer, I think it is of public interest, it is incapacitating, it is something that prevents him from the exercise of his leadership (the prime minister)... As it is a degenerative and handicapping illness, I believe it is justified at that point to say it. However, I really make a distinction between a cancer in the primary phase, I

> believe in that case there is no interest (to disclose it), in the same way as a prime minister using anti-depressors. Those things do not prevent someone from functioning normally and affect his judgment. Obviously, if he is at an advanced stage of cancer and thinks he will not survive much longer, it becomes of public interest (personal interview, Tourangeau).

University of Ottawa communications professor Marc-François Bernier admits that he does not know enough on the specific potential consequences of all medical conditions, but has his own idea on what should be disclosed or not.

> I would say that all the cognitive and psychic problems, addictions problems, in certain cases alcohol, as it is also a disease, (should be disclosed). It could also be health problems that force people to follow exhausting treatments, cancer for example... However, for example, suffering from diabetes or cholesterol, I do not think it is relevant. It would have to affect importantly the ability to work (personal interview, Bernier).

Carleton journalism professor Klaus Pohle's vision is simple: a politician should disclose all of his medical records. He argues even a sexually transmitted disease has the potential to be of public interest, as it can shed light on the politician's values.

NDP MP Christine Moore, who is a nurse, believes there should not be any specific medical requirement to be elected, as it is up to the politician to judge if his health is preventing him from doing his job and what he should disclose. She would feel a moral obligation during an election campaign to disclose to her constituents that she is going to be absent from Parliament for an extended period of time, for example if she was thinking of having a child. The Abitibi-Témiscamingue MP acknowledges the work of an elected representative can be very demanding, but refuses to identify any disease that a politician should disclose. "There is a certain physical capacity that you need to have, but

the work of an MP is more intellectual, therefore except the trips and the schedules that are very packed, there is no requirement," she said (personal interview). Moore believes that a politician does not, contrary to a physician, have a direct impact on public safety. Nevertheless, she thinks that any candidate who has reason to believe that he is suffering from an illness that will prevent him from doing his job should be transparent with his constituents and tell them he might not be able to be there until the end.

Former Quebec health minister Yves Bolduc thinks that there is never any guarantee that an elected representative will complete his mandate. The electorate only has the guarantee that he will start it. He would leave the disclosure of most physical illnesses to the discretion of the politician, but he thinks that the development of a mental problem would be much more problematic. "We cannot make an absolute rule, but there are exceptions, like if someone would be suffering from a dangerous paranoid personality disorder, a persecution problem, also dementia problems" (personal interview). In those cases, Dr. Bolduc believes there is a need for a system to prevent those persons from making decisions that can affect constituents, as well as to assist someone who is highly depressive or even suicidal. Dr. Bolduc adds that "great men often have great faults," saying that it is often better to hire an alcoholic who does his job well than someone who does not have the required competencies.

Liberal MP Dr. Carolyn Bennett believes there needs to be more vigilance in Parliament to ensure that Canadian political leaders are fit for the job (personal interview). She said serious health problems, like a terminal health

condition, or a serious drug or alcohol addiction are among the diseases that should require honesty from politicians.

According to the founding director of the McGill Centre for Medicine, Ethics and Law, Margaret Somerville, politicians are under an ethical obligation to disclose their health conditions when it would make them unfit for the job. "I do not think it is cancer that would be a problem, but it would be more... let's say that he has severe psychotic episodes, a mental illness, I think that would be much more worrying," she argued (personal interview).

Dr. Stan Kutcher argues that great care must be taken over the interpretation of mental illnesses that may actually be dangerous for politicians, since suffering from some of them can actually be an advantage. For example, someone who has an attention deficit disorder (ADD) may be much more capable of focusing his attention for short periods of time, and then able to completely refocus on something else. It "may be absolutely fantastic in a crisis situation. Someone with that mental illness might actually be able to do a better job than someone who does not have the illness," the psychiatrist argued (personal interview).

Dr. Jean-Bernard Trudeau also noticed in his medical career that such mental problems might in fact help chief executive officers of companies in their work.

> Especially manic-depressives, people who have an affective bipolar disorder. There are a lot of them who are at the head of big companies. In some way, this illness contributed to the success of the business, which is a paradox. They are hyper active, sharp, stimulated, and are often really innovative. However, when mania brushes against psychosis or transforms into depression, the judgement deteriorates (personal interview, Trudeau).

Dr. Trudeau also worries about the effect such requirements on politicians may have on public perception of mental illnesses, which are in his view still very stigmatized in our societies. He admits that anything that affects "the head" has the potential to be problematic for a politician, and it is not just mental illnesses that may compromise the functioning of the brain. Other physical diseases may produce deterioration of the brain, for example a cancer may metastasize to the brain, or circulatory failure may also produce problems. Dr. Trudeau also thinks that politicians in high-level decision-making positions should undergo medical exams at least once a year after turning 50, or even more frequently depending on their genetics. As it stands, no federal politician is obliged to see a doctor on a regular basis.

Would it be fair to ruin or hold up the political career of a leader who has a disease? What if he is an exception and this illness is perfectly under control and does not have a significant impact on his work? Would that discourage him from running? Would we therefore exclude potentially extraordinary politicians? Opinions are divided on the matter, as some consider the discriminatory impacts of the practice not worth the changes, while others think the electorate has the right to have as much information as possible to help them make their decision. Guillaume Lavoie is part of the first group.

> I do not know anyone yet, even the best physicians, who is able to guarantee the impact of an illness like cancer.... Once I have a hundred percent of the information, what is the reliability of this medical information? There can be a history of fourteen heart attacks in my family and I will never have one. But are people going to think that I am at risk of having one? (personal interview, Lavoie)

Dr. Kellie Leitch goes in the same direction.

> We know that the spectrum of cancer and the spectrum of the treatments and the impacts of those are huge... We know that some cancers are completely treatable. We know that some are treated with surgery, some other with therapies, some with radiation; we know that these impacts are different, and we know they are different on different people... My body may react to chemotherapy or to an illness in a very different way that someone older than me or someone younger than me, let alone that sometimes we as physicians make mistakes (personal interview, Leitch).

Dr. Yves Bolduc is concerned that restrictions may damage the future for someone who may heal could recover from an illness.

> If you push this argument further, if this person has three months left to live, it does not mean that in three months we will not find something (a remedy), then you will have caused him prejudice (personal interview, Bolduc).

The physicians interviewed for this thesis did not provide a list of illnesses that should require disclosure from elected representatives, as recurrent migraines may have bigger impact than a well-controlled mental illness. Designing a list of illnesses that should be disclosed is a difficult task, partly because there are different kinds of illnesses, of treatments, of reactions to treatments, and of possible results. The major concern regarding a politician's health condition, as outlined in this chapter, is that he would have a serious illness that would affect his judgment. Determining when it becomes a threat to his duties is also a question of judgment, which is the reason why a code of ethics addressing this issue should be built and brought to the attention of political staffers and physicians. There are examples in other professions where some forms of disclosure are required to demonstrate that requiring a certain level of transparency from those who are in position of political power is not out of the question.

Conclusion

Should politicians be forced to disclose their health status in Canada? Opinions vary widely, but this thesis finds a clear consensus: Politicians should not be forced to do so, but they should be ethically obligated to disclose the status of their health when their health problems correspond to certain conditions detailed in this thesis.

The interviewees generally thought that a law or regulation would hurt more than help. Elected representatives' privacy would be compromised, and embarrassing details that have no relevance may be published, such as a past abortion or a sexually transmitted disease. This thesis has examined concepts such as privacy, personalization of politics, the right to know, and the right to an informed vote. Reviews of past examples of ill leaders show that health of politicians is an on-going issue and a worldwide concern. When such a situation happens in Canada, the debate over disclosing politicians' health circumstances is once again revived, which proves the relevancy of this research project, and the need to find an answer. It has also demonstrated, through several examples, that medical privacy has limitations, as when a medical condition represents a threat to public safety, which makes it possible for some employers to ask for specific medical and physical qualifications. The research in this thesis has demonstrated that no health requirement exists for elected representatives, therefore that a Member of Parliament could be seriously impaired and remain in office for as long as he wishes as long as he is elected. Is it logical to consider there is no such requirement, especially for high profile ministers and the prime minister? If

certain medical conditions forbid some people from driving a car, should other medical conditions prevent politicians from ruling a country?

A private matter such as health is a difficult and delicate topic to tackle. Some of the interviewees in this thesis thought of people they knew who suffered from significant illnesses and made personal connections to this issue. An elected representative talked about her mother's cancer during the interview, saying that she was surely fit for her job even when she was undergoing chemotherapy treatments. Health matters and their disclosure can get highly emotional, depending on many factors, and particularly memories of suffering relatives who were holding dear to their passion, which was their work. The challenge of this thesis is to balance individual rights against public good, and the right to know against the right to human dignity.

The interviewees generally agreed politicians have an ethical obligation to disclose health issues that have a significant impact on their work, if they decide to stay in office. The criteria that should guide disclosure for elected representatives suggested by the interviewees are all motivated by the public interest. The same elements should also guide journalists before publication of information regarding health matters. They include:

> The illness is significant enough to affect the ability to govern.
>
> The illness compromises judgment and mental faculties significantly enough to have impacts on decision-making.
>
> The impact of the illness may affect public safety.
>
> The illness has direct impact on public affairs.
>
> The illness is life threatening over a short or medium term period, for example a mandate of four years.

> The illness forces the politician to leave office temporarily, for a few weeks or a few months.
>
> The illness affects an elected representative who carries significant responsibilities. The more important his role, the more important the information becomes.
>
> The politician or his staff decides to address the matter proactively or after the matter has been subject to debate in the public sphere, such as social media.

An original contribution to this thesis by Dr. Karen Breeck is the idea of building a code of ethics for politicians that would specifically address their health, which would be a tool to raise public awareness. No medical disclosure could be forced, but it would be highly encouraged in certain circumstances. This code of ethics could include a form including general conditions elected representatives should meet, inspired by the list above, which is similar to the one cited by the American authors Sreiffer, Rubel and Fagan in chapter two. These authors would also add the history of past illnesses to the health conditions requiring disclosure if the illness had the potential to come back and cause complications. As explained earlier, each health issue is unique and many factors must be considered prior to disclosure as the variations in treatments, the stage of the disease, and so on. It has also been noted that addictions are considered as diseases. Alcoholism for example is a concern to many interviewees, depending on the severity of the addiction. As suggested by Dr. Karen Breeck, the form in the ethics code would not have to mention illnesses in particular but would ask for several tasks an elected representative should be able to fulfil. An example of a requirement could be the elected representative is able to take reasoned

decisions. Elected representatives should also be encouraged to visit their family doctor at least every two years, and once a year for the prime minister and high profile officials.

The creation of such a code of ethics would be brought to the attention of physicians, who would know the health condition of their patients who are politicians, which would bring additional pressure on politicians to respect such a code. It would be up to the personal discretion of the politician to bring the form to his physician and ask him if he meets the requirements. In the case of a serious situation, such as a prime minister suffering from Alzheimer disease, it would also give potential arguments and defence in court for a physician who feels the urge to disclose the information to persons of interest, for example the principal advisors of the prime minister.

This code of ethics would only apply to elected representatives, but could certainly serve as a guide for political candidates who will be encouraged to respect it if elected. Although this aspect has not been tackled in this thesis, it would be relevant to ask for the same requirements for senators, who, as legislators, contribute to the political process. However, as senators are appointed and not elected, this could create a precedent for other professions. This thesis' goal is to determine when should journalists report on elected representatives health status, but further studies could also identify other professions that should ask for such a code of ethics.

The journalists interviewed in this thesis generally agreed on how uncomfortable they feel when asking politicians about their health. A code of ethics for politicians would therefore legitimize the questions asked by reporters

on this issue, as they would have a set of criteria to guide them. The issue would then be treated similarly to finances, which are private, but may become a public issue, as when elected representatives are suspected of being in conflict of interest, for example if they make decisions that impact a company in which they have an interest. The difference with health conditions and finances is that politicians would not have to disclose the information to the ethics commissioner. No sanction could be applied for the politicians infringing the code, as the sanctions would be symbolic by the public reaction and media pressure, similarly to the United States.

In the meantime, Canadian journalistic associations as well as print and broadcast media should address the issue to update their ethics codes to offer more guidance for journalists on these matters. While the issue has often been addressed in the media, this topic has until now generally been ignored in the major academic publications and professional publications in Canada. As suggested by Charlotte Gray in 1993, Canadian medical institutions should also come up with their own policies on this issue, and as proposed by Dr. Jean-Bernard Trudeau in this thesis, medical ethical committees should also address the issue to detail procedures for their physicians facing such a situation.

This thesis has also made the distinction between a presidential and parliamentary system, which makes the context of disclosure different. In the United States, the president's health is particularly relevant as he is also the commander-in-chief of the military. In Canada, even if there is no precedent of an incapacitated prime minister, several ministers could replace him and the government could keep functioning. However, there is a strong trend toward the

personalization of politics. Prime Minister Stephen Harper is well known for centralizing power and not giving latitude to his ministers. NDP Leader Jack Layton was very popular in the province of Quebec, and many of his 59 candidates elected in 2011 were unknown to the public. It can only be considered fair for the electorate to expect that the leader they elect will be able to fulfil his duties to implement the ideas and values that led to his election. A change worth noting is the increase in self-exposure demonstrated by Canadian politicians. Stephen Harper's approach on social media has recently taken a shift. He created the hashtag #dayinthelife on Twitter, to which he attached several pictures of him at work in order to communicate to Canadians what one day as a prime minister looks like. This increasingly communicational approach that values self-disclosure comes at the same time Liberal leadership candidate Justin Trudeau is very active on Twitter, on which he takes a conversational approach.

Trudeau has put his personal life forward by often exposing his children and particularly his wife Sophie Grégoire in front of the cameras. Trudeau recently made a surprising and interesting move, and which may create a precedent, by choosing to disclose his financial situation to the *Ottawa Citizen*, when there was no significant public pressure on him to do so. This approach is similar to politicians voluntarily disclosing their health records in the United States, even if for some of them their health status has not previously raised major concerns. Are we going to see a politician voluntarily putting his health records on the table in Canada? No matter in which circumstances a politician decides to disclose his health records, journalists should always treat this information very carefully, keeping in mind that the records they obtain might

not be complete. In addition, there would not necessarily be any guarantees that the information would include complete disclosure on mental health issues that, as we have seen, are as concerning, if not more, than physical issues when it comes to a politician's ability to serve the public.

Bibliography

Abrams, Herbert L. "Shielding the President from the Constitution: Disability and the 25th Amendment." *Presidential Studies Quarterly* 23.3 (Summer, 1993): 533-553.

Abrams, Herbert L. "Can the Twenty-Fifth Amendment Deal with a Disabled President? Preventing Future White House Cover-Ups." *Presidential Studies Quarterly* 29.1 (March 1999): 115-133.

Abrams, Herbert L. "Presidential Health and the Public Interest: The Campaign of 1992." *Political Psychology* 16.4 (Dec. 1995): 795-820.

Allen, Anita L. "Why Journalists Can't Protect Privacy." Published in: *LaMay, Craig L. Journalism and the Debate Over Privacy*. New Jersey: Lawrence Erlbaum Associates (2003) 70-75.

Bauer, Julien. *Le Système Politique Canadien*. Paris: Presses Universitaires de France, 1998.

Beaudry, Patrick, Claude Sorbets, and André Vitalis. *La Vie Privée à l'Heure des Médias*. Bordeaux: Presses Universitaires de Bordeaux, 2002.

Bloom, Stephen G. "Health Legacies from Franklin Roosevelt to Robert Dole, or

How Medical and Health Care Issues Took Over the Nation's News." *Journal of Health Communication* 1 (1996): 83-97.

Calvert, Clay. *Voyeur Nation. Media, Privacy, and Peering in a Modern Culture.* Colorado: Westview Press, 2000.

Cohen, D. Elliot and Deni Elliott. *Journalism Ethics: A Reference Handbook.* California: ABC-CLIO Inc, 1997.

Cohen, Elliot D. *Philosophical Issues in Journalism.* New York and Oxford: Oxford University Press, 1992.

Craig, Richard. "Expectations and Elections: How Television Defines Campaign News." *Critical Studies in Mass Communication* 17. 1 (Mar 2000): 28-44.

Crawford, Michael G. *The Journalist's Legal Guide: 5th Edition.* Scarborough: Thomson Carswell, 2008.

Delli Carpini, Michael X, and Bruce A Williams. "Let Us Infotain You: Politics in the New Media Age." Published in: *Mediated Politics: Communication in the Future of Democracy.* Cambridge, UK and New York: Cambridge University Press, 2001.

Dodek, Adam M. "When Death Strikes the Nation: The Assassination of Prime Minister Rabin and the Problem of Succession." *Loyola of Los Angeles*

International and Comparative Law Review (1996): 57-87.

Dodek, Adam M. "The public safety exception to solicitor-client privilege: Smith V. Jones". *U.B.C. Law Review 34.1* (2000): 293- 315.

Gilbert, Robert E. "The Contemporary Presidency: The Twenty-Fifth Amendment: Recommendations and Deliberations of the Working Group on Presidential Disability." *Presidential Studies Quarterly* 33.4 (Dec 1993): 877-887.

Gilbert, Robert E. "Coping with Presidential Disability: The Proposal for a Standing Medical Commission." *Politics and the Life Sciences* 22.1 (Mar 2003): 2-13.

Gingras, Anne-Marie. *La Communication Politique. État des Savoirs, Enjeux et Perspectives*. Québec: Presses de l'Université Laval, 2003.

Glodeanu, Antonio. "The Impact of Digital Communication in Political Journalism." *Annals of Spiru Haret University, Journalism Studies 12 (*2011): 135-138.

Godin, Pierre. *René Lévesque, l'homme brisé*. Montréal: Boréal, 2005.

Gray, Charlotte. "When does a Politicians Health Status Become a Public Issue?" *Canadian Medical Association Journal* 148.2 (1993): 294-297.

Grant v. Torstar Corp. 3 S.C.R. 640. *Supreme Court of Canada*. 2009.

Kuhn, Raymond and Erik Neveu. *Political journalism. New Challenges, New Practices*. London and New York: Routledge, 2002.

Lakoff, Robin Tolmach. "The Politics of Nice." *Journal of Politeness Research* 1.2 (2005): 173-191.

LaMay, Craig L. *Journalism and the Debate Over Privacy*. New Jersey: Lawrence Erlbaum Associates, 2003.

Linsky, Marty. "Journalism Ethics and the Coverage of Elections." Published in: Cohen, D. Elliot and Elliott, Deni. *Journalism Ethics: A Reference Handbook*. California: ABC-CLIO Inc, 1997.

Lehman-Wilzig, Sam. "Political Ill-Health Coverage: Professional-Ethical Questions regarding News Reporting of Leaders Ailments." Jou*rnal of Health Communication: International Perspectives* 8.1 (2003): 59-77.

Masters, Roger D. and Denis G. Sullivan. "Nonverbal Behavior and Leadership: Emotion and Cognition in Political Processing." Published in *Explorations in*

Political Psychology, dir. Shanto Iyengar and William J. McGuire. Durham: Duke University Press, 1993.

Neveu, Erik. "Four generations of political journalism." Published in: *Political journalism. New challenges, New Practices*. London and New York, Routledge, 2002.

Olen, Jeffrey. *Ethics in Journalism*. New Jersey: Prentice Hall, 1988.

Parent, W.A. "Privacy, Morality, and the Law." Published in Cohen, Elliot D. *Philosophical Issues in Journalism*. New York and Oxford: Oxford University Press, 1992.

Park, Bert Edward. *The Impact of Illness on World Leaders*. Philadelphia: University of Pennsylvania Press, 1986.

Post, Jerrold M. *Leaders and Their Followers in a Dangerous World: The Psychology of Political Behavior*. New York: Cornell University, 2004.

Post, Jerrold M. "The Seasons of a Leader's Life: Influences of the Life Cycle on Political Behavior." *Political Psychology* 2.3/4 (Autumn – Winter, 1980): 35-49.

Post, Jerrold M., and Robert S Robins. *When Illness Strikes the Leader*. New Haven and London: Yale University Press, 1993.

Post, Jerrold M., and Robert S. Robins. "Choosing a Healthy President." *Political Psychology* 16.4 (Dec. 1995): 841-860.

Post, Jerrold M., and Robert S. Robins. "The Captive King and His Captive Court: The Psychological Dynamics of the Disabled Leader and His Inner Circle." *Family Business Review* VI.2 (Summer 1993): 203-221.

Russell, Nick. *Morals and the Media: Ethics in Canadian Journalism.* Vancouver: UBC Press, 1994.

Savigny, Heather. "The Media and the Personal Lives of Politicians in the United States." *Parliamentary Affairs* 57.1 (2004): 223-235.

Stanyer, James and Dominic Wrin,. "Public Images, Private Lives: An Introduction." *Parliamentary Affairs* 57.1 (2004): 5-7.

Saint-Jean, Armande. *Éthique de l'information. Fondements et pratiques au Québec depuis 1960.* Montréal: Les Presses de l'Université de Montréal, 2002.

Schauer, Frederick. "The Social Construction of Privacy." Published in: *LaMay, Craig L. Journalism and the Debate Over Privacy.* New Jersey: Lawrence Erlbaum Associates, 2003.

Smith v. Jones. 1 S.C.R. 455. *Supreme Court of Canada.* 1999.

Solove, Daniel J. T*he future of reputation: gossip, rumor, and privacy on the Internet.* New Haven: Yale University Press, 2007.

Streiffer, Robert, Alan P. Rubel and Julie R. Fagan. "Medical Privacy and the Public's Right to vote: What Presidential Candidates Should Disclose." *Journal of Medicine and Philosophy* 31.4 (2006): 417-439.

Temple, Mick. *The British Press.* Maidenhead: McGraw Hill Open University Press, 2008.

Tunstall, Jeremy. "Trends in news media and political journalism." Published in *Political journalism. New challenges, new practices.* London and New York: Routledge, 2002.

Ward, Stephen J.A. "Ethics for the New Mainstream" Published in *The New Journalist. Roles, Skills and Critical Thinking.* Edited by Paul Benedetti, Tim Currie and Kim Kierans. Toronto: Emond Montgomery publications, 2010.

Working Group on Presidential Disability. D*isability in U.S. presidents: Report, recommendations and commentaries.* Winston-Salem: Bowman Gray Scientific Press, 1996.

Newspaper articles:

Altman, Lawrence K. "Many Holes in Disclosure of Nominees' Health." *The New York Times* Oct. 19, 2008.

Altman, Lawrence K. "For F.D.R. Sleuths, New Focus on an Odd Spot." *The New York Times* Jan. 4., 2010.

Branswell, Helen. "One year on, Canadians still in the dark about what killed Jack Layton." *The Canadian Press* Aug. 21, 2012.

Bryden, Joan, and Steve Rennie. "Les Canadiens n'ont pas à tout savoir sur l'état de santé de Layton, dit le NPD." *La Presse* Jul. 26, 2011.

Campion-Smith, Bruce. "Senator's illness raises new questions about a politician's right to privacy." *The Toronto Star* Sept. 1, 2012.

Campion-Smith, Bruce. "NDP MP Romeo Saganash takes lave to battle alcoholism." *The Toronto Star* Oct. 22, 2012.

Chase, Steven and Bill Curry. "People have said to me, 'Do you have cancer?... What's going on? Are you going to die?" *The Globe and Mail* Jan. 31st, 2013.

Cheadle, Bruce. "Tories rebrand 'Government of Canada' as 'Harper government'. *The Toronto Star* Mar. 3, 2011.

Desbarats, Peter. "Canadian Journalism Respects Privacy Staying Out of the Gutter." *The Globe and Mail* Dec. 11, 1987.

Dougherty, Kevin. "Bourassa resigning as Quebec Liberal leader." *The Financial Post* Sept.15, 1993.

Gagnon, Lysiane. "What if Quebeckers had known the whole story about Jack Layton?" *The Globe and Mail* Sept. 12, 2011.

Gagnon, Lysiane. "Inside Quebec Premier's illness puts Quebec's political world on hold." *The Globe and Mail* Jan. 16, 1993.

Gaudreau, Valérie. "Politiciens sous les rayons X." *Le Soleil* Aug. 27, 2011.

Hamilton, Graeme. "Bouchard battles back; Surviving lethal illness almost a miracle, doctor says," *The Gazette* Dec. 3, 1994.

Hébert, Chantal. "Spring vote could be best bet for Layton, NDP." *The Toronto Star* Mar. 7, 2011.

Hébert, Chantal. "Media failed to do their job covering Layton's health." *The*

Toronto Star Dec. 16, 2011.

Lagacé, Patrick. "Jack et le crabe." *La Presse* July 26, 2011.

Lagacé, Patrick. "Un cancer, un malaise, une question." *La Presse* Aug. 29, 2011.

Lagacé, Patrick. "Le flou artisitque." *La Presse* Sept. 7 2011.

Lessard, Denis. "Claude Béchard: veritable bête politique." *La Presse* Sept. 7 2010.

Maser, Peter. "Bourassa concedes future uncertain because of cancer." *The Ottawa Citizen* Jan. 14, 1993.

McKenzie, Robert. "Treatment of Bourassa is lacking in decency." *The Toronto Star* Oct. 2, 1990.

McKenzie, Robert. "Bourassa gets clean bill of health." *The Toronto Star* May 4, 1993.

McQuigge, Michelle. "Rob Ford Adopts US-Style Approach to Personal Health Information Disclosure." *The Canadian Press* Aug. 11, 2012.

McKnight, Peter. "Should politicians have to disclose health

problems?" *Vancouver Sun* Aug. 26, 2011.

Murphy, Rex. "Canada's smiley-face election." *The National Post* Apr. 30, 2011.

McGregor, Glen. "Side effects of Flaherty's treatment don't affect his performance, spokesman says." *The Ottawa Citizen* Jan. 31st, 2013.

No author. "Quebec leader had surgery for cancer, aide says." *The Toronto Star* Sept. 28, 1990.

No author. "Bourassa's aides angered over attention given cancer." *The Toronto Star* Nov. 21, 1990.

No author. "Bourassa's aide admits cover-up." *The Toronto Star* Feb. 19, 1991.

No author. "Bourassa's melanoma: Jury is out on cancer therapy. *The Ottawa Citizen* Jan. 13, 1993.

No author. "Bourassa's health; time for greater openness." *The Ottawa Citizen* Jan. 12, 1993.

Picard, André. "Public officials owe full disclosure." *The Globe and Mail* Jul. 27, 2011.

Richer, Jules. "La descente aux enfers de René Lévesque." *Le Devoir*, Oct. 29, 2005.

Seguin, Rhéal. "Bourassa has malignant tumor removed Quebec premier blames 'abusive use of sun' for skin cancer on back." *The Globe and Mail* Sept. 28, 1990.

Séguin, Rhéal. "Bourassa's skin cancer spreads, Tumor surgery triggers concern over Premier's ability to lead." *The Globe and Mail* Jan. 9, 1993.

Somerville, Margaret. "Is Jack Layton obliged to disclose his health details? No." *The Globe and Mail* Jul. 29, 2011.

Smith, Joanna. "No hip replacement for Layton, despite sister's flub." *The Toronto Star* April 17, 2011.

Sources online:

American Medical Association. "Opinion 5.04 Communications Media: Standards of Professional Responsibility." *AMA Code of Medical Ethics.* Updated in 1996. http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion504.page. Last consulted Feb. 20, 2013.

Bédard, Michel, Brian O'Neal, and James Robertson. "Government and Canada's 40th Parliament: Questions and answers." *Parliamentary Information and Research Service, Library of Parliament*, Sept. 9, 2008.

http://www.parl.gc.ca/Content/LOP/researchpublications/prb0812-e.pdf. Last consulted April 6, 2012.

Canadian Human Rights Commission. "Bona Fide Occupational Requirement." http://www.chrc-ccdp.ca/preventing_discrimination/page4-eng.aspx Last consulted Feb. 21, 2013.

Canadian Forces Health Services. "Task statement, Dental Technician – Hygienist." http://www.forces.gc.ca/health-sante/pd/CFP-PFC-154/AN-Dapp4-00335-02-eng.asp Last consulted Feb. 21, 2013.

Canadian Medical Association. "CMA POLICY, CMA Code of Ethics." Last reviewed Mar.2012. http://policybase.cma.ca/dbtw-wpd/PolicyPDF/PD04-06.pdf Last consulted on Dec.6 2012.

CBC/Radio-Canada. "Journalistic Standards and Practices." http://cbc.radio-canada.ca/en/reporting-to-canadians/acts-and-policies/programming/journalism/investigative-journalism/ Last consulted Feb. 20, 2013.

Elections Canada. "The Electoral system of Canada, 2nd edition." *Library and Archives Canada Cataloguing in Publication* (2007): 7.

http://www.elections.ca/res/canelecsys_e.pdf. Last consulted February 20, 2012.

Elections Canada. "Report of the Chief Electoral Officer of Canada, on the 41st General Election of May 2, 2011." Library and Archives Canada Cataloguing in Publication (2007).
http://www.elections.ca/res/rep/off/sta_2011/stat_report2011_e.pdf Last consulted Feb. 20, 2012.

Library and Archives Canada. "Sir John A. Macdonald, Canada's Patriot Statesman." Published Sept. 7, 2009.
http://www.collectionscanada.gc.ca/023/013/023013-1000-e.html Last consulted February 20, 2012.

McAllister, Ian. "The Personalization of Politics." Research School of Social Sciences, Australian National University, Canberra Australia, A chapter prepared for Russel J.Dalton and Hans-Dieter Klingemann, editors, *Oxford Handbook of Political Behavior* (2005).
http://politicsir.cass.anu.edu.au/staff/mcallister/pubs/personal.pdf. Last consulted April 6, 2012.

Thompson, Denis F. "The Private life of Politicians." Published Feb. 6, 2010 http://www.raison-publique.fr/article206.html. Last consulted Dec. 4, 2011.

Interviews:

Bélanger, Karl. Personal interview. December 1st, 2012.

Bennett, Carolyn. Personal interview. November 23rd, 2012.

Bernier, Marc-François. Personal interview. October 26, 2012.

Bolduc, Yves. Personal interview. November 11, 2012.

Breeck, Karen. Personal interview. January 17, 2013.

Delacourt, Susan. Personal interview. November 30th, 2012.

Delisle, Norman. Personal interview. November 27, 2012.

Dvorkin, Jeffrey. Personal interview. November 29th, 2012.

Hébert, Chantal. Personal interview. December 17, 2012.

Kutcher, Stan. Personal interview. December 11, 2012.

Lavoie, Guillaume. Personal interview.

Leitch, Kellie. Personal interview. November 1st, 2012.

Moore, Christine. Personal interview. November 5th, 2012.

Picard, André. Personal interview. November 19, 2012.

Pohle, Klaus. Personal interview. October 25th, 2012.

Salisbury, David. Personal interview. December 10, 2012.

Reid, Scott. Personal interview. November 20, 2012.

Somerville, Margaret. Personal interview. October 29, 2012.

Stead, Sylvia. Personal interview. November 2nd, 2012.

Tourangeau, Pierre. Personal interview. November 8th, 2012.
Trudeau, Jean-Bernard. Personal interview. November 22nd, 2012.

Appendix A

Canadian Forces Health Services. "Task statement, Dental Technician – Hygienist." http://www.forces.gc.ca/health-sante/pd/CFP-PFC-154/AN-Dapp4-00335-02-eng.asp Last consulted February 21, 2013.

TASK STATEMENT

A-MD-154-000/FP-000Appendix 4, Annex D

Dental Technician - Hygienist

MOSID 00335 - (DENT TECH - HYGST)

GENERAL DUTIES: The functions of the DENT TECH - HYGST are to perform those duties directly relating to unassisted dental hygiene therapy. Employment involves both sedentary and active duties in urban, tactical and naval environments. In that a DENTAL TECH - HYGST is also a fully qualified DENT TECH, they will normally deploy on operations where they are employed in the capacity of a DENT TECH.

MOC RELATED DUTIES	APPLICABLE TO					
Circle the X for each task that Mbr is UNABLE or UNFIT to perform	CWO	MWO[1]	WO	SGT	MCPL	CPL
1. Lift, carry and lower supplies weighing up to 35 Kg several times a day.			X	X		
2. Climb onto/off vehicle cargo decks, 1.75 m 20 times a day using ladders and on top vehicles 5.2m high 20 times a day.			X	X		
3. Drag dental field equipment weighing 72.5 Kg in/out of dental vans and over uneven terrain.			X	X		
4. Drive SMP vehicles cross country up to 10 hours/day in low/no light conditions withstanding vibration, bumping and jarring.			X	X		
5. Bend, stoop, crouch, climb and crawl over, under around vehicles and dental equipment to perform general maintenance, cleaning and disinfecting daily.			X	X		
6. Work 12 hour shifts with periods of 16 hours work.		X	X	X		

MOC RELATED DUTIES	APPLICABLE TO					
Circle the X for each task that Mbr is UNABLE or UNFIT to perform	CWO	MWO[1]	WO	SGT	MCPL	CPL
7. Stand or sit without rest for periods of 45 to 90 minutes, five to nine times a day, leaning over patients in awkward positions with arms outstretched during dental treatments.		X	X	X		
8. Cope with stress of treating patients for periods ranging from 45 to 90 minutes, nine times a day.		X	X	X		
9. Perform efficiently in confined spaces		X	X	X		
10. Cope with fumes common to dental practice.		X	X	X		
11. Handle hazardous materials daily wearing protective clothing.		X	X	X		

NOTE: 1. Applies to Reg F personnel only.

Ch 2009

Dental Technician - Hygienist (DENT TECH - HYGST)

GENERIC DUTIES: (Complete and attach Appendix 1, Annex D)

_____Signature of Member

_____Signature of Medical Officer

_____Member's Name & Service Number(Please Print)

_____Medical Officer's Name(Please Print)

_____Date

_____Date

Appendix B

Canadian Human Rights Commission. "Bona Fide Occupational Requirement." http://www.chrc-ccdp.ca/preventing_discrimination/page4-eng.aspx Last consulted February 21, 2013.

Overview

Preventing Discrimination

Tools and Resources

Bona Fide Occupational Requirement

Questions in this section (click on question):13. What is a bona fide occupational requirement?14. What is the process for determining if a rule or a standard is a BFOR?

13. What is a bona fide occupational requirement?

A bona fide occupational requirement (or BFOR, for short) is a standard or rule that is integral to carrying out the functions of a specific position. For a standard to be considered a BFOR, an employer has to establish that any accommodation or changes to the standard would create an undue hardship.

For example, an airline pilot must have very good eyesight. This standard is integral to carrying out the duties of a pilot's job.

When a standard is a BFOR, an employer is not expected to change it to accommodate an employee. However, to be as inclusive as possible, an employer should still explore whether some form of accommodation is possible anyhow.

14. What is the process for determining if a rule or standard is a BFOR?

The Supreme Court of Canada established a three-step process to determine if a specific accommodation is a BFOR because it creates an undue hardship[4]. The three-step process encourages the development of standards that are free from discriminatory barriers and that accommodate the potential contributions of all employees.

a) Step one: Establish a rational connection

Was the rule adopted for a purpose rationally connected to the performance of the job?

In the first step, the employer identifies the general purpose of the standard and determines whether it is rationally connected to the performance of the job. For example, in the case of the airline pilot, good eyesight is rationally connected to flying aircraft in all weather conditions. However, if there is no rational relationship, the employer is expected to accommodate and the rule cannot be a BFOR. For example, the employer believes that good customer service requires that all its employees stand when greeting customers. While the rule of standing to greet customers may have been adopted in good faith and with no intention to discriminate, it has a discriminatory impact on those who use wheelchairs. Is the

standard reasonably necessary? No. One might legitimately argue that good customer service does not solely rely on standing to greet customers.

b) Step two: Establish good faith

Did the employer adopt the rule in an honest and good faith belief that it was necessary to the fulfilment of a legitimate work-related purpose?

This step looks at the subjective element of the standard. The employer considers whether the standard was adopted with no intention of discriminating against an employee or group of employees.

The following considerations are helpful in determining whether the rule or standard was adopted in good faith:

Why was the standard developed?

When and by whom was the standard developed?

What process was used to develop the standard?

If the standard is not thought to be reasonably necessary or motivated by discriminatory considerations, then the standard must be changed, as it cannot be a BFOR.

c) Step three: Establish reasonable necessity

Is the rule reasonably necessary to the accomplishment of that legitimate work-related purpose?

In this step the employer examines whether the standard is reasonably necessary. The employer must carefully consider all reasonable options for accommodation, short of undue hardship. If the employer, after exploring all options for accommodation, finds that it cannot accommodate, then the rule can be considered a BFOR.

On the other hand, if the employer finds that it can accommodate the employee, then the employer must change the rule or standard to incorporate the accommodation.

Here are some questions to ask in considering whether the standard is reasonably necessary.

Were alternatives to the standard or rule considered?

If so, why weren't they adopted?

Must all employees meet a single standard, or could different standards be adopted?

Does the standard treat some more harshly than others?

If so, was the standard designed to minimize this differential treatment?

What steps were taken to find accommodations?

Is there evidence of undue hardship if accommodations were provided?

[4] British Columbia (Public Service Employee Relations Commission) v. BCGSEU (1999 35 C.H.R.R. D/257 (S.C.C.) also known by the name of Meiorin